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Crl.R.C.No.511 and other Nos. of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C.Nos.511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522,
523, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858 and 859
of 2019

and

Crl.M.P.Nos.12630, 12598, 12614, 12602, 12606, 12609, 12622,
12594, 12591, 12611, 12618, 12597 and 12626 of 2019

Crl.R.C.No.511 of 2019:

P.Thiyagarajan

.. Petitioner

Vs

State Rep. by The Inspector of Police
Central Crime Branch. Team-I
Egmore, Chennai-08
(Ref.Crime No.561 of 2006)

.. Respondent

Prayer in Crl.R.C.No.511 of 2019: Criminal Revision Case filed under Section 397 read with 401 Code of Criminal Procedure, to call for records and set aside the judgments passed in C.A.No.276 of 2017 dated 16.11.2018 by the Court of Sessions, Chennai by confirming the judgment passed in C.C.No.2137 of 2012 dated 12.09.2017 by the learned III-Metropolitan Magistrate, George Town, Chennai.



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For Petitioner : Mr.V.Vijaykumar
Mr.V.Karthikeyan
Mr.C.Venkadesan
Legal Aid Counsel

For Respondent : Mr.S.Vinoth Kumar
Government Advocate

COMMON ORDER

The Crl.R.C.Nos.511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522 and 523 of 2019 are filed by the first accused namely, *Thiyagarajan* and Crl.R.C.Nos.847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858 and 859 of 2019 are filed by the second accused namely, *Jayachandran*. All these cases are connected to each other and arise out of a common transaction and therefore taken up and are disposed of by this common judgment.

2. The second accused in this case namely, *Jayachandran* was functioning as a Property Clerk in the Court of the Principal Special Judge, NDPS Court, Chennai and he was about to superannuate on 30.06.2005. Therefore, just before his retirement, the learned Presiding Officer directed



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him to reconcile all the properties entrusted to him and file a statement before him. Without complying with the said directions of the learned Presiding Officer, the second accused is said to have not reported for duty for the last two working days and therefore, he was placed under suspension and thereafter, with the help of the first accused in this case and other officials, a detailed inventory was taken and the case properties which were supposed to be in the custody of the second accused were found to be missing. The aforesaid inventory of the missing case properties is extracted hereunder:

<i>Sl.No</i> <i>.</i>	<i>Year</i>	<i>Amount in Indian Currency</i> <i>(in Rs.)</i>
1	1993	230.5
2	1994*(US Dollars 5000)	91024
3	1995**(US Dollars 2800)	118745
4	1996	2945
5	1997	23355
6	1998	27780
7	1999	147310
8	2000	13000
9	2001	26588
10	2002***(Sri Lankan Currency 3500)	92907
11	2003	49860
12	2004	46385
13	2005	22770
Total		662999.5



Therefore, after due enquiry, a complaint was forwarded by the concerned Court and a case was registered on 13.07.2006 in Crime No.561 of 2006 and **P.W.8 Raja** took up the case for investigation and filed separate final reports in respect of each year and accordingly, the cases were taken on file by the learned III Metropolitan Magistrate, George Town, Chennai and after issuance of summons and upon being questioned, the accused denied the allegations and stood trial.

3. Thereafter, the prosecution examined one *Raji*, who was the Head Clerk working in the concerned Court. He deposed to the fact that from 19.04.1999, the first accused *Thiyagarajan* was the Head Clerk and was also the Property clerk. From 04.09.2002, the second accused was posted and was functioning as Property Clerk. The second accused, at the verge of his retirement, remained absent from 27.06.2005. Thereafter, upon verification, it was found that the list of case properties, being cash, were missing as stated above and therefore, he lodged a complaint. The prosecution also examined one *Manohar*, who was posted in the NDPS Court in the relevant point of time, who deposed that the accused were working as Property Clerks and that since the money were found missing, the police also examined him. One *R.Ganesan* was examined as **P.W.3**,



who handed over the photocopy of the list of properties including the list of missing properties and the photocopy of the relevant pages of the register.

One *Shanmugam* was examined as **P.W.4**, who was an Advocate, who deposed to the fact that during the relevant period, the first accused was the Head Clerk and thereafter he was transferred. He did not know as to what happened after 2002. One *Aadimoolam*, the then Sub-Inspector of Police who registered the First Information Report was examined as **P.W.5**. One *Arulraj*, who initially investigated the case and recorded the statements of the witnesses was examined as **P.W.6**. One *Moorthy*, who also partly investigated the case was examined as **P.W.7**. One *Raja*, the Inspector of Police who completed the investigation and filed the charge sheet proposing the accused guilty under Section 409 r/w Section 34 of the Indian Penal Code was examined as **P.W.8**.

4. On behalf of the prosecution, **Exhibit P.1** to **Exhibit P.19** were also marked. Upon being questioned about the incriminating circumstances and the material evidence on record under Section 313 of the Code of Criminal Procedure, the accused denied the same as false. Thereafter, the second accused examined himself as **D.W.1** and **Exhibit D.1** to **Exhibit D2**



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were marked on behalf of the accused. The Trial Court thereafter proceeded to hear the arguments of the learned Public Prosecutor and the learned counsel for the accused and by a judgment dated 12.09.2017, found both the accused guilty for the offence under Section 409 of the Indian Penal Code and imposed a punishment to undergo simple imprisonment for a period of one year and to pay fine of Rs.1,000/- and in default of payment of fine, to undergo simple imprisonment for a period of one month in respect of each of the cases. Aggrieved by the same, both the petitioners filed appeals and by separate judgments but, however with similar reasons, dated 16.11.2018, the Appellate Court dismissed the appeals and confirmed the conviction and sentence imposed by the Trial Court. As against which the present revision is filed.

5. Heard *Mr.V.Vijaykumar*, learned counsel appearing on behalf of the petitioner and *Mr.V.Karthikeyan*, learned counsel and *Mr.C.Venkadesan*, learned Legal Aid Counsel also appearing on behalf of the second petitioner and *Mr.S.Vinoth Kumar*, learned Government Advocate (Crl. Side), appearing on behalf of the respondent.

6. The uniform arguments of all the learned counsel appearing in the



case on behalf of the petitioners is that, in this case, admittedly, except for **P.W.1** and **P.W.2**, who are supposed to be the official witness, there is no other evidence on record relating to the occurrence. A perusal of their evidence and also their correspondence between the Special Court and the High Court marked in the matter, it would be clear that there was no proper inspection right from the year 1994 up to the year 2005. Only at the verge of retirement of the second accused, the learned Presiding Officer had insisted him to reconcile the properties and on account of the same, missing of these properties came to be unearthed. There is absolutely no evidence on record to show that either the first accused, who was working as a Property Clerk from 1998 to 2002 and the second accused from 2002 onwards, in any manner misappropriated or converted into their own use. As a matter of fact, when the first accused took charge, as on date of his taking over charge, these properties, were not specifically handed over and no such document for handing over of the charge is marked by the prosecution. Same is the case of the second accused also. Therefore, learned counsel would submit that the prosecution in this case has neither proved the entrustment nor the misappropriation thereof, which are only the two ingredients which are necessary for the punishing the accused under Section 409 of the Indian Penal Code.



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7. Learned Counsel would submit that it is one thing to claim overall responsibility because both the accused were functioning as a Property Clerks for some period of time, as during the period, they could have also exercised due diligence verifying whether the properties were there or not and would have brought to the notice of the Court. But, that is only the question of responsibility for their post. For dereliction of that duty, already disciplinary proceedings were initiated and they were found guilty of the charges in the disciplinary enquiry and the punishment of dismissal from service has been imposed on them. But, now, before this Court, for the criminal charges under Section 409 of the Indian Penal Code, the prosecution has miserably failed to prove that the petitioners entrustment as well as the dishonest misappropriation or flitting away of the property except in the manner required by them in law. Therefore, to convict them for the offence under Section 409 of the Indian Penal Code was absolutely without material.

8. Apart from the other legal arguments, learned counsel appearing on behalf of the first accused namely, *Thiyagarajan* would submit that the said accused is aged about seventy two years but, however his physical



condition is totally worse as he has been affected with paralysis and is bedridden and is unable to even move around. His physical condition is worsening and he is in the fag end of his life. Learned counsel appearing on behalf of the second accused would submit that, already the accused has suffered enough as he has been imposed with a punishment and he is now aged seventy six years and is weak and fragile and would also produce the medical records of ailments and submitting the same, learned counsel would also impress upon this Court that the petitioners have already been made to suffer on account of facing of trial and also by way of departmental proceedings in respect of lapse that may be committed by them. But, however, such misappropriation should have been provided by the prosecution that they have committed the criminal offence so as to impose the punishment against them.

9. *Per contra*, learned Government Advocate (Crl. Side) would submit that **P.W.1** has spoken about the fact that the first accused and the second accused were only functioning as Property Clerks during the relevant period. The order placing them in charge of the said position is also marked as **Exhibit P.13**. The extract of the property register is marked as **Exhibit P.3**, from which, what was the list of properties which are



supposed to be there in the custody of the accused is provided. The ***Exhibit***

P.7, the list of missing properties after the inspection is also marked.

Therefore, he would submit that once the accused are working in such post and the properties are missing, it goes without saying that they have misappropriated the same and therefore, he would submit that the Trial Court as well as the First Appellate Court have correctly convicted the petitioners and taking into account the other conditions, only lenient punishment has been imposed and therefore, he would submit that there is nothing for this Court to interfere in the revision petitions filed by the petitioners.

10. I have considered the rival submissions made on behalf of both side and perused the material records of this case.

11. Apart from the material records produced, the orders, especially the order dated 02.09.2009, by which both petitioners were dismissed from service after due enquiry on departmental proceedings, is also produced before this Court. In this background, I have carefully considered the facts on record.



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12. The charge against the petitioners is one under Section 409 of the Indian Penal Code which is criminal breach of trust by a Public Servant. There is no quarrel over the fact that the petitioners being an Officer / Servant of the NDPS Court or Public Servant. Therefore, the question before this Court is that whether the petitioners have committed the criminal breach of trust. The criminal breach of trust is defined in Section 405 of the Indian Penal Code and it is useful to extract the Section 405 for ready reference:

“Section 405. Criminal breach of trust.- Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.”

Therefore, a perusal of the same, it would be clear that it is for the prosecution to prove that the accused has been in any manner entrusted



with the property or had dominion over the property. Secondly, the prosecution has to prove that the said properties which were entrusted, were dishonestly misappropriated or converted to own use or dishonestly used or disposed in violation of any direction of law prescribed the mode in which such trust has to be discharged or of any legal contract expressed or implicated which he is made touch discharge of such trust or willfully suffers any other person to do so.

13. As far as the first ingredient of entrustment is concerned, learned counsel appearing on behalf of the petitioners would argue that the prosecution in this case has not produced any charge for handing over the document and therefore, would contend that the entrustment is not proved. That may be so, but, that argument cannot lead the petitioners anywhere because, firstly, even if it is considered that the earlier properties which are said to have been entrusted is not provided by way of charge handing over some of the properties which came to be deposited during the tenure of the petitioners. Therefore, the prosecution at least to that effect proved the entrustment of those properties in the relevant years in which the accused had worked.



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14. Now, coming to the second ingredient, having proved the entrustment at least partially, this Court has to further consider whether the said properties have been dishonestly misappropriated or converted or disposed of or has been used in violation of the law. There is absolutely no material whatsoever about the dishonest intention of the accused. The investigation perhaps, because of the long delay or otherwise was not able to unearth any means by which the properties were disposed off or misappropriated or if so, by whom and in what manner. The final report is totally silent in this regard. In this regard, the arguments of the learned Government Advocate (Crl. Side) is that, once the prosecution proved that the accused were Property Clerks and once the properties were missing, it goes without saying that they have misappropriated the same. I am afraid that I am unable to accept the said submission. For a criminal offence, the persons cannot be punished on presumption. Though, the overall responsibility and the requirements of their duty to verify the articles may be relevant and may be considered in the departmental action by proving the charges against them but, however, when it comes to criminal offence, it is for the prosecution to clearly allege and prove that they have dishonestly misappropriated or converted the properties to their own use or



they have used or disposed of the properties. Absolutely nothing is contained in the final report nor in the evidences of any of the witnesses nor in the documents produced before the Court in ***Exhibit P.1*** to ***Exhibit P.19*** so as to even remotely suggest any use or dishonest misappropriation and therefore, I am of the view that the prosecution in this case has miserably failed to prove the ingredients of the offence of criminal breach of trust and the ingredients having not been proved, the petitioners cannot be imposed with the punishment neither under Section 406 or 409 of the Indian Penal Code.

15. Therefore, I am of the view that even though both the Courts below have concurrently convicted the petitioner, when the basic ingredient itself has not been proved, this Court has to necessarily exercise the power of revision as the accused cannot be punished without the foundational facts having been proved by the prosecution. Therefore, when the prosecution have not categorically and positively leveled any allegation and proved the same, essentially, the benefit of doubt has to be given to both the accused. It could have been possible that any third party would have also taken away those money and have misappropriated them. Therefore, when doubt in the case of the prosecution is very much possible, then the



benefit has to be given to the accused. This apart, the second accused of this case also got into the box as **D.W.1** and also the prosecution could not elicit anything from him that he only misappropriated and converted the properties to his own use. It is also to be further noticed that in this case, for a long number of years, the properties were not reconciled and there were other persons also working in the capacity. In the present days, all the moneys have been deposited in the treasury and the rule position has since changed by now. Therefore, for the above facts and circumstances, I am of the view that the petitioners will be entitled to the benefit of doubt.

16. In view of the above, these criminal revisions are allowed on the following terms:

- (i) The conviction and sentence imposed on the petitioners vide judgments dated 12.09.2017 by the Trial Court in C.C.Nos.2125, 2135, 2133, 2137, 2126, 2136, 2134, 2132, 2129, 2131, 2128, 2127, 2130, 2137, 2136, 2129, 2132, 2135, 2133, 2131, 2127, 2125, 2130, 2126, 2128 and 2134 of 2012 and in the appeals in Crl.A.Nos.276, 275, 268, 271, 274, 272,



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270, 266, 264, 269, 265, 267, 273, 295, 298, 296, 299,
301, 303, 293, 304, 302, 300, 292, 294 and 297 of
2017 are set aside;

(ii) The accused are acquitted by giving them the benefit
of doubt. The fine amount if any paid by them is
ordered to be refunded.

17. Consequently, connected miscellaneous petitions are closed.

Index : yes/no
Speaking/Non-speaking order
drm

17.08.2022

To

1. The III-Metropolitan Magistrate, George Town, Chennai.
2. The Inspector of Police
Central Crime Branch. Team-I
Egmore, Chennai-08
(Ref.Crime No.561 of 2006)
3. The Public Prosecutor, High Court of Madras.



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D.BHARATHA CHAKRAVARTHY, J.

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518, 519, 520, 521, 522, 523, 847, 848, 849,
850, 851, 852, 853, 854, 855, 856, 857,
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