



WEB COPY

BAIL SLIP

The Petitioner/Accused viz., Mani S/o.Narayanasamy was directed to be released on bail vide order in MP.1 of 2014 in CrI.RC.No.31 of 2014 dated 12.02.2014.

The Petitioner/Accused viz., S.Ramamurthy S/o.Somukoon was directed to be released on bail vide order in MP.1 of 2013 in CrI.RC.No.1124 dated 17.09.2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CRL.R.C.NOS.31 OF 2014 AND 1124 OF 2013

Mani

.. Petitioner/
Appellant/Accused
(in CrI.R.C.No.31 of 2014)

S.Ramamurthy

.. Petitioner
(in CrI.R.C.No.1124 of 2013)

Versus

State by Inspector of Police
C.C.I.W., C.I.D,
Tiruvannamalai,
(Cr.No.2/2007)

.. Respondent/
Complainant
(in both CrI.R.Cs)

Prayer in CrI.R.C.No.31 of 2014:

Criminal Revision Case is filed under Section 397 and 401 of Cr.P.C., to call for records from the file of the learned I Additional District and Session Judge, Vellore in CrI.A.No.60 of 2011, dated 24.07.2013 and ordered to revise the judgment of the learned I Additional and Session Judge, Vellore in C.A.No.60 of 2011, dated 24.07.2013, consequently, set aside the conviction and sentence imposed on the revision petitioner by the learned



Judicial Magistrate No.II, Vellore in C.C.No.46 of 2009, dated 11.02.2011 and acquitting the petitioner from all the charges.

Prayer in Crl.R.C.No.1124 of 2013:

WEB COPY

Criminal Revision Case is filed under Section 397 and 401 of Cr.P.C., to call for records from the file of the learned I Additional District Judge, Vellore in Crl.A.No.59 of 2011, dated 24.07.2013 and ordered to revise the judgment of the learned I Additional Judge, Vellore in C.A.No.59 of 2011, dated 24.07.2013, consequently, set aside the conviction and sentence imposed on the revision petitioner by the learned Judicial Magistrate No.II, Vellore in C.C.No.46 of 2009, dated 11.02.2011 and acquitting the petitioner from all the charges.

For Petitioners : Dr.S.Padma
(in both Crl.R.Cs)

For Respondent : Mr.L.Baskaran
(in both Crl.R.Cs) Government Advocate (Crl.Side)

COMMON ORDER

These Criminal Revision Cases in Crl.R.C.Nos.1124 of 2013 and 31 of 2014 are taken up together for disposal as they arise out of the same case in Cr.No.2 of 2007 and C.C.No.46 of 2007.

2. On a complaint, dated 11.08.2006, based on 81 Enquiry Report, the respondent Police registered a case in Cr.No.2 of 2007 and P.W.4, Manoharan, took up the case for investigation, completed the investigation and laid chargesheet, holding totally five accused, A1 to A5 in these cases as guilty for the offences under Sections 120(B), 408 and 477-A of Indian Penal Code. The case was taken on file as C.C.No.46 of 2009 by the learned Judicial Magistrate No.II, Vellore.

3. Upon the appearance of the accused, copies were furnished under Section 207 of Cr.P.C., and upon being questioned, the accused denied the charges and stood trial. The prosecution, thereafter, examined P.Ws.1 to 4 and marked Exs.P-1 to P-17 and rested its case. Thereafter, upon being questioned about the material evidence on record and the incriminating circumstances as per Section 313 of the Code of Criminal Procedure, the accused denied the same as false. Thereafter, no evidence was let in by the defence.

4. The Trial Court, therefore, proceeded to hear the learned Assistant Public Prosecutor for the prosecution and the learned Counsel for the accused and by a judgement, dated 11.02.2011,



found that the prosecution failed to prove the case beyond doubt in respect of accused Nos.2, 3 and 4, but, however found that A1, being the Secretary to the society and A5, being the member/loan applicant, have categorically committed an offence in as much as A5 has submitted a false application without owning the lands and A1 having processed the same, had advanced the loan and causing loss to the society and therefore, held them guilty. The Trial Court found that the first accused, namely Ramamurthy, guilty for the offence under Section 408 of Indian Penal Code and sentenced one year Rigorous Imprisonment and a fine of Rs.3000/- and in default of payment of fine, three months Simple Imprisonment and found that the fifth accused guilty of an offence under Section 406 of Indian Penal Code and sentenced him to undergo six months Rigorous Imprisonment and a fine of Rs.1000/-, in default of payment of fine, to undergo one month Simple Imprisonment.

5. Aggrieved by the same, the first accused, Ramamurthy, filed Crl.A.No.59 of 2011 and the fifth accused, Mani, filed Crl.A.No.60 of 2011 before the learned I Additional District Judge, Vellore. By a separate judgements, dated 24.07.2013, the learned I Additional District Judge, Vellore, after independently, appraising the evidence and after considering the arguments submitted on behalf of the appellant, confirmed the conviction and sentence imposed against both the accused and therefore, aggrieved by the same, as mentioned above, the above two Revision Cases are laid before this Court.

6. Dr.S.Padma, the learned Counsel appearing on behalf of the petitioners, took this Court through the charge. It is her submission that the basis of the charge is that without having any land, whatsoever, the fifth accused submitted an application for a loan and that the first accused processed the said loan, by entering into criminal conspiracy and thereby misappropriating the money belonging to the society to their personal use and causing loss to the society. In this connection, she would draw the attention of this Court to paragraph No.9 of the judgement of the Trial Court, whereunder itself, it is clearly mentioned that as per Ex.P-7, chitta adangal submitted by A5, Mani, in support of his loan application, the lands in question were the lands in survey No.23/7, 23/4, 32/4, and 38/3. The complaint, made before the Trial Court, was that the said chitta adangal stood in the name of Narayanasamy.

7. According to the learned Counsel for the petitioner, a perusal of the cause title would itself show that the fifth accused, Mani is son of Narayanasamy. Therefore, the very basis of charge that the fifth accused submitted a loan application without any lands whatsoever is absolutely incorrect. To



buttress her submission, she would file an additional typed set of the papers, where, after the death of the father of the fifth accused, namely Narayanasamy, patta No.58 has been issued in respect of the lands in the very same survey number, in favour of the fifth accused herein, which would go to show that both the Trial Court as well as the lower Appellate Court did not even consider this very basic fact about the innocence of the fifth accused. She would further submit that, in this case, there was not even a loss to the society as by G.O.No.70, dated 13.06.2006, these loans have also been waived by the Government of Tamil Nadu and by proceedings, dated 10.02.2014, the list of loans waived by the Government of Tamil Nadu is given by the Co-operative Society itself and this particular loan, obtained by Mr.Mani, is mentioned in serial No.58 as having waived. Therefore, according to her, there is no any criminal conspiracy or fraud played in the matter and there was also no loss to the society. Therefore, the charge itself was based on a report filed under Section 81 of the Co-operative Societies Act which suffers from total non-application of mind and the I.O i.e., P.W.4, without conducting any investigation whatsoever, blindly filed the chargesheet and the Courts below also, without even appreciating this very basic fact, convicted the accused persons.

8. Per contra, Mr.L.Baskaran, the learned Government Advocate (Criminal Side) would submit that the subsequent waiver of the loan by the Government will not in any manner affect the prosecution and he would also file a detailed counter showing that the 81 enquiry was conducted in this case and all the evidences were duly gathered and the concerned witnesses were examined and therefore, the prosecution has approved its case beyond doubt.

9. I have considered the rival submissions made on either side, have gone through the material evidence on record. I am in agreement with the learned Counsel for the petitioner. In this case, the very basis of the charge is that the fifth accused, Mani, had obtained a loan for agricultural purposes by producing Ex.P-7, chitta adangal falsely and he did not own the said lands is the basis of the prosecution case. But a perusal of Ex.P-7 itself, it would be clear that the land was in the name of Narayanasamy, who is none other than the father of the petitioner and as rightly pointed out by the learned Counsel for the petitioner, subsequently, patta No.58 has been changed in the name of the fifth accused, Mani.

10. It is common knowledge that in respect of the coparcenary lands, the patta, chitta and adangal normally stand in the name of the elder generation and thereafter, mutated after the death of the grandfather or the father, as the case may be. Without even advertting to this basic fact, when the



fifth petitioner has not committed any error whatsoever in making the application, the entire charge has been laid on an erroneous assumption of fact. The Courts below also, even though while narrating that the chitta is in the name of Narayanasamy, did not even apply their mind, as to this fact. Therefore, I hold that the charge of the prosecution itself is erroneous and there is no any commission or omission by A1 to A5 in this matter and therefore, the case of the prosecution is absolutely incorrect and factually wrong.

11. I hold that the first petitioner and the fifth petitioner have not committed any offence whatsoever. It is only the matter of repayment of loan, which is also since been waived by the Government of Tamil Nadu which can be seen from the documents produced before this court.

12. In that view of the matter, Crl.R.C.Nos.31 of 2014 and 1124 of 2013 are allowed. The judgement, dated 11.02.2011 of the learned Judicial Magistrate No.II, Vellore in C.C.No.46 of 2009 and the judgements, dated 24.07.2013 of the learned I Additional District and Sessions Judge, Vellore in Crl.A.Nos.60 of 2011 and 59 of 2011 are set aside. The accused are acquitted. Fine amount, if any, paid by the accused, shall be refunded to them. Consequently, M.P.No.2 of 2014 in Crl.R.C.No.31 of 2014 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

grs

To

1. The Principal District Judge,
Vellore.
2. The I Additional District and Session Judge,
Vellore.
3. The Judicial Magistrate No.II,
Vellore.



4. The Chief Judicial Magistrate, Vellore.
(For information)

5. The Inspector of Police
C.C.I.W., C.I.D, Tiruvannamalai.

6. The Public Prosecutor,
Madras.

Copy To

The Section Officer,
Criminal Section, High Court,
Madras.

Crl.R.C.Nos.31 of 2014 and 1124 of 2013

SSN(CO)
PM/21/03/2022