IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2022

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.No.275 of 2017

D. Chinnaraj

... Petitioner / 2nd Accused

Vs.

State rep.by
The Inspector of Police,
CCIWCID,Tiruvannamalai.

... Respondent / Complainant

Prayer: Criminal Revision Case is filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the order of conviction and sentence dated 25.10.2016 in Criminal Appeal No.199 of 2010 on the file of the I Additional District and Sessions Judge, Vellore confirming the order dated 17.08.2010 in C.C.No.390 of 2007 on the file of the Judicial Magistrate No.II, Vellore.

For Petitioner : Mr. R. Arumugam

For Respondent : Mr. N.S. Suganthan, Government Advocate

O R D E R

This revision is filed by the accused/A2 against the order passed in C.A.No.199 of 2010 by the learned I Additional District and Sessions Judge, Vellore, by confirming the conviction and sentence passed in C.C.No.390 of 2007 by the Judicial Magistrate No.II, Vellore. Both the Courts below found the accused guilty for the offences under Section 408 r/w 35 and 477(A) r/w 35 IPC.

2. The case of the prosecution is that the revision petitioner herein/Senior Clerk of Vandavasi Primary Agricultural Co-operative Bank along with his Secretary, Veeraragavan/A1, Muthukrishnan, President/A3, created forged pay slips in the name of the depositors and thereby misappropriated a sum of Rs.12,800/- which belongs to Paneerselvam, Rs.7,500/-, which

belongs to Devarani, Rs.11,600 which belongs to Venkatachalam, Rs.6,150/- which belongs to Jeenadoss, Rs.15,750/- which belongs to Krishnamoorthi, Rs.8,180/- which belongs to Elumalai, Rs.26,950/- which belongs to Singaram, Rs.5,150/- which belongs to Gopalakrishnan, totally amounting to Rs.94,080/-.

2(i) Before prosecution, the department has initiated enquiry proceeding under Section 81 of Tamil Nadu Co-operative Societies Act, and after full fledged enquiry, the revision petitioner and others were found guilty of the charge of misappropriating the said sum as stated above. Thereafter, the criminal prosecution has been lodged. In order to prove the case of the prosecution, 9 witnesses examined on behalf of the prosecution and 40 exhibits relied by the prosecution. The trial Court has concluded that this petitioner who is the second accused and Veeraragavan who is the first accused is guilty of offence under Section 408 r/w 35 and 477 r/w 35 IPC.

2(ii). However, acquitted A3 from all charges and this A1 and A2 petitioners herein charged under Sections 408 r/w 35, 471 r/w 35 IPC. On appeal, the appellate Court, re-appreciated the evidence and found the petitioner/A2 as well as the first accused guilty and the trial Court order was confirmed.

3. The present revision petition is filed stating that the Court below ought not to have relied upon Section 81 enquiry report which was submitted beyond the period of limitation referring Section 81(4) of Tamil Nadu Co-operative Societies Act, it is stated that while the enquiry officer is supposed to submit his report within a period of three months, the said report was submitted after 9 months. Therefore, it ought not to have been taken note of it. Further, it is also contended that the members of the society so account holder were examined after 10 years and they were not aware of the transaction and did not support the case of the prosecution.

4. Furthermore, contending that it was the 3rd accused who was responsible for the payment of money and he was found not guilty and acquitted by the Courts below. Whereas, this petitioner falsely been implicated and convicted.

5. The grounds raised in the revision petition does not carry any merit for consideration to hold the finding of the Court below as incorrect or illegal for the reason that eight of the depositors whose money has been siphoned based on the forged payslips were examined and they have supported the case of the prosecution. The departmental enquiry initiated under Section 81, relied by the prosecution not as a substantial piece of evidence. Independently, the prosecution has proved the siphoning off money by marking the receipts and ledger books.

The withdrawal of the money by way of payslips without instruction and knowledge of the account holders being spoken by A2 to A7. The petitioner herein who served as Senior Clerk and entrused with the responsibility of maintaining the ledger of the loan section and also as a cashier from 01.04.1997 to 05.10.2000 cannot blame the Secretary who is entrusted with the other administrative work. Exonerating A3, will not enure any benefit to the revision petitioner who was found guilty based on the ocular and documentary evidence.

6. In the above circumstances, this Court finds no reason to interfere with the finding of the Court below and hence, the order of the appellate Court in C.A.No.199 of 2010 confirming the trial Court order in C.C.No.390 of 2007 is hereby confirmed and the revision petition is dismissed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The I Additional District and Sessions Judge,
   Vellore.

2. The Judicial Magistrate No.II,
   Vellore.

3. -do through- The Chief Judicial Magistrate,
   Vellore.

4. The Inspector of Police,
   CCIWCID,Tiruvannamalai.

+2ccs to Mr.C.Senapathi, Advocate, S.R.No.36514

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SJ[co]
NSK/08/07/2022