



## Bail Slip

The Petitioner / Accused viz., D.Rajaraman, male/56 years S/o.Dharmalingam was released on bail as per order of this Court dated 27.03.2017 in CrI.MP.Nos.4589 & 4590 of 2017 in CrI.R.C.No.517 of 2017 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.517 of 2017

D.Rajaraman

... Petitioner

Vs.

Station House Officer,  
CCIW Cuddalore,  
Cuddalore District.  
Crime No.13/1994.

... Respondent

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records and to set aside the order passed in CrI.A.No.70 of 2011 in C.C.No.658 of 1999, on the file of the III Additional District and Sessions Judge, Cuddalore, vide order dated 08.03.2017 in confirming the order of conviction passed by the Judicial Magistrate-II, Virudhachalam.

For Petitioner : Mr.S.N.Arunkumar

For Respondent : Mr.A.Damodaran,  
Additional Public Prosecutor

## ORDER

The petitioner was convicted by the learned Judicial Magistrate No.II, Virudhachalam/trial Court in C.C.No.658 of 1999, dated 27.07.2011, for offence under Section 408 IPC and sentenced to undergo one year Rigorous Imprisonment and to pay a fine of Rs.3,000/-, in default, to undergo three months Rigorous Imprisonment. As against the judgment of conviction and sentence of the trial Court, the petitioner preferred an appeal



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before the learned III Additional District and Sessions Judge, Cuddalore/lower appellate Court. The learned III Additional District and Sessions Judge, by judgment, dated 08.03.2017 in C.A.No.70 of 2011 confirmed the sentence of the trial Court, against which the petitioner is before this Court.

2.The brief facts of the case is that Srimushnam Primary Agricultural Co-operative Bank headed by its Special Officer/PW6 was functioning in Srimushnam for the public welfare. PW1/Ramu and PW3/Ramasamy are its Secretary and Writer. The Fair Price Shop in Kozhai Village was under the control of Srimushnam Primary Agricultural Cooperative Bank. As per the resolution of PW3 and PW6, dated 07.04.1994, the petitioner was appointed as Salesman in Kozhai Village Fair Price Shop for sale of essential commodities to the subscriber who was entrusted with articles by PW2. As per Ex.P2, dated 07.04.1994, the goods worth of Rs.27,951/- was entrusted to the petitioner and later, essential commodities worth of Rs.1,11,735/- was entrusted to the petitioner. As on 23.07.1994, the petitioner was entrusted with the good worth of Rs.1,39,686/- for sale. During the course of time, the petitioner sold goods and remitted the sale proceeds to the tune of Rs.1,90,500/- and the balance of goods in hand worth Rs.30,185.65/-. As per the Liability Register of the shop maintained by the petitioner, out of the balance of goods, the petitioner has dishonestly misappropriated goods worth of Rs.20,246.25/-. Hence, an FIR in Crime No.13 of 1994 was registered by the respondent Police, for offence, under Section 408 IPC. On completion of investigation, charge sheet was filed before the trial Court and the same was taken on file as C.C.No.658 of 1999. On completion of trial, the petitioner was convicted and sentenced as stated above.

3.During trial, on the side of the prosecution 9 witnesses were examined and 103 documents were marked. On the side of the defence, no witness and no document was marked.

4.The learned counsel for the petitioner submitted that when the petitioner was on medical leave, on 10.08.1994, the Fair Price Shop, Kozhai Village was broken and inventory stocks were taken and projected the case as though the amount of Rs.20,246.25/- was dishonestly misappropriated by the petitioner. There were vital contradictions in the prosecution witnesses. This fact was not properly appreciated by the Courts below. He further submitted that as per Tamil Nadu Cooperative Societies Act, 1983, if there is any shortage of goods or any misappropriation, an enquiry under Section 82 of the Tamil Nadu Cooperative Societies Act, 1983 is sine qua non to fix responsibility and thereafter, the surcharge proceedings to be initiated. This principle of natural justice was not followed by the prosecution, on the other hand, straight away launched



the above criminal case against the petitioner. When the petitioner was on medical leave, the shop was broken, is not in dispute. Thus, the findings of the trial Court as well as the lower appellate Court is not on proper appreciation of evidence and materials. Hence, he prayed for setting aside the judgments of the Courts below.

5.The learned Additional Public Prosecutor appearing for the respondent submitted that on the complaint of PW1, an FIR in Crime No.13 of 1994 was registered, for offence under Section 408 IPC, against the petitioner. The petitioner was entrusted with the goods and essential commodities as could be seen from Ex.P2. The petitioner's duty is to maintain records, bills, ledger as per the proceedings, dated 07.04.1994 (Ex.P3). In Ex.P3, the duties and responsibilities of the petitioner clearly enlisted. The petitioner from 07.04.1994 was entrusted with functioning of the Fair Price Shop, which comes under Srimushnam Primary Agricultural Cooperative Bank.

6.He further submitted that on 25.07.1994, the petitioner was on casual leave and thereafter, he applied for medical leave till 14.08.1994 and produced the medical certificate (Ex.P97) to that effect. In the event of petitioner availing medical leave, he has to handover the shop to the another person as per the office proceedings, but he failed to do so. On 01.08.1994, PW6, the Special Officer directed PW3, the Accountant to verify and enquire about the health of the petitioner in the address given in the medical report and get the keys of the shop, because the public were affected due to non-distribution of essential commodities. PW3 had gone to the address found in the medical report, but the petitioner was not there and thereafter, PW3 had gone to the house address, there also he was not present. Hence, PW3 submitted a report to PW6 to that effect and the same was marked as Ex.P98 during trial. PW6, the Special Officer had sent a requisition (Ex.P99) to the Government Hospital, Cuddalore to examine the petitioner and send a report. The Doctor, Government Hospital, Cuddalore sent a letter (Ex.P100) directed the petitioner to appear before the hospital on 22.08.1994, but the petitioner failed to appear. Hence, the Doctor informed PW6 about the absence of the petitioner through the report (Ex.P101). Since the public were greatly affected, PW6 had sent a communication to the petitioner to handover the keys of the Fair Price Shop, but there was no response. Hence, on 10.08.1994, at about 11.00 a.m., in the presence of PW1, PW3, PW4, PW5, PW6 & PW8, the Fair Price Shop, Kozhai Village was broken and entrusted with PW5. At that time, the stocks verified and shortage of goods found. Hence, a complaint (Ex.P102) was sent to the Superintendent of Police, Civil Supplies CID, Chennai, who forwarded the complaint to the respondent Police, who registered FIR (Ex.P103) and conducted



investigation and later, filed charge sheet. The trial Court on examination of witness and materials, convicted the petitioner. The lower appellate Court independently finding that the petitioner as Salesman of Kozhai Village Fair Price Shop, misappropriated the amount of Rs.20,246.25/- during the period from 07.04.1994 to 24.07.1994, had confirmed the judgment of the trial Court.

7.This Court considered the rival submissions and perused the materials available on record.

8.The facts of the case not disputed by the petitioner by way of cross examination of witnesses and unable to give proper reply while questioning under Section 313 Cr.P.C. The entrustment of goods to the petitioner proved by the prosecution. Likewise, unauthorized absence of the petitioner from 27.07.1994 to 14.08.1994 was proved by the prosecution by producing the medical certificate (Ex.P97), a letter for referring the petitioner to appear before the Medical Board (Ex.P99) and the reply of the medical board (Ex.P101). Since the petitioner failed to appear for medical examination, a complaint was given by PW1 along with Ex.P99 on 08.08.1994. Thereafter, the proceedings was issued on 02.08.1994 directing the petitioner to handover the key of Fair Price Shop. Despite receiving the proceedings through telegram on 08.08.1994, the petitioner failed to handover the key. Thereafter, a complaint was received from Vigilance Committee (Ex.P6) that the local public are put to hardship due to the closure of the Fair Price Shop from 27.07.1994. Hence, the Fair Price Shop was break open on 10.08.1991 in presence of PW1, PW3, PW4, PW5, PW6 & PW8. The petitioner not disputed the entrustment goods and no explanation for the misappropriation committed by him. Thus, the trial Court on appreciation of evidence and materials, had rightly convicted the petitioner. The Lower Appellate Court, being a fact finding Court has correctly re-appreciated the entire evidence and materials and confirmed the judgment of the trial Court.

9.It is well settled that the scope of the criminal revision is very limited, unless there is any illegality or any perversity in the appreciation of evidence by the Courts below.

10.On reading of the entire materials, this Court does not find any illegality or perversity or infirmity in the judgment of the trial Court and the lower appellate Court and the same are, hereby, confirmed.

11.In the light of the above discussion, the criminal revision is not sustainable and, is liable to be dismissed and accordingly, dismissed.



12.The trial Court is directed to secure the petitioner for sufferance of the remaining period of sentence, if he is outside.

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Sd/-  
Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1. The III Additional District and Sessions Court,  
Cuddalore.
2. The Judicial Magistrate Court No.II,  
Virudhachalam.
3. The Station House Officer,  
CCIW Cuddalore,  
Cuddalore District.
4. The Public Prosecutor,  
High Court, Madras.

Copy to

The Section Officer,  
Criminal Section,  
High Court, Madras - 104.

+1cc to Mr.C.Ramkumar, Advocate, S.R.No.13114

Cr1.R.C.No.517 of 2017

PL[co]  
NSK 04/04/2022