BAIL SLIP in Crl.R.C.No.624 of 2017

The Petitioner/Accused -1 Namely K.Ravindranath aged 56 years S/o Kannu Pillai was directed to be released on bail in and by order of this Court dated 21/04/2017 made in CRP.MP.No.5600&5601/2017 in Crl.R.C.No.624 of 2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2022

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

Crl.R.C.No.624 of 2017

K.Ravindranath ... Petitioner/Accused - 1

Vs.

State rep. by.,
Inspector of Police,
C.C.I.W., C.I.D.,
Vellore.
(Crime No.1 of 2003) ... Respondent

Prayer :- Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C., praying to set aside the judgment passed against the petitioner in C.A.No.252 of 2011 on the file of I Additional District and Sessions Judge, Vellore dated 10.08.2016 by confirming the conviction and sentence imposed by the learned Judicial Magistrate No.II, Vellore, dated 21.10.2011 in C.C.No.304 of 2007.

For Petitioner : Mr.S.Sairaman

For Respondent : Mr.A.Gopinath
Government Advocate (Crl. Side)

ORDER

This Criminal Revision Case has been preferred challenging the judgment of the learned I Additional District and Sessions Judge, Vellore, dated 10.08.2016 made in C.A.No.252 of 2011.

2. The revision petitioner was the first accused before the trial Court.

3. The case of the prosecution is that the first accused was the Secretary, the second accused was the Assistant Secretary and the third accused was the President of Valathur Primary Agricultural Co-operative Bank; the Secretary is responsible for the maintenance of the bank accounts, ledgers and all transactions including the properties of the Bank. The second accused as the Assistant Secretary of the Bank, had got a duty to prepare Account sheets for collecting loan repayments, membership contributions and maintain the disbursal register, Day Book and cash register; the third accused had got over all responsibility for properties belonging to the Bank;

3.1 On 17.05.2000, a loan of Rs.40,000/- was sanctioned for a member by name Venugopal against his Fixed Deposit of Rs.50,000/-; but the accused had disbursed him only Rs.16,000/- and misappropriated the remaining Rs.24,000/- by making false entries in the registers; on 24.06.2001, a false entry for Rs.2,000/- has been made on the pretext that one Mohamed Ishak, who demanded crop loan has paid the share contribution of Rs.2,000/-; when one Jeganathan demanded a crop loan, the accused made a false entry for Rs.60/- on 24.06.2001, on the pretext that it was paid by Jeganathan towards his share contribution. Thus, the accused 1 and 2 had misappropriated a total sum of Rs.26,060/- and have committed the offences under Sections 408 r/w 35 and 477(A) of IPC;

3.2 On the surprise inspection made by P.W.2 - Thomas, Divisional Supervisor, Pernampet on 08.06.2001, he noticed that for many of the accounts, entries have been made in the loan register against the debit and credit columns but relevant entries have not been made in the Day Books. In view of this, he submitted a special report dated 11.06.2001 to the Special Officer, Central Co-Operative Bank, Vellore. During the relevant time, P.W.4 - Gurunathan, Field Manager at Gudiyatham Branch, also had submitted a special report to the Special Officer, Central Co-operative Bank, Vellore on 23.06.2001 by stating that the quantum of loan amount have been magnified by making false entries in the ledger account, though lesser amount was disbursed to the members of the Co-operative Bank towards jewel loan; by taking advantage of the magnified figures shown in the ledger, they got more amount from the Central Co-operative Bank and misappropriated the difference;

3.3 On receiving the special reports, P.W.3 - Ranganathan, Deputy Registrar of Thirupattur Division had appointed one P.W.8 - Thangavelu as the Enquiry Officer and issued proceedings - Ex.P2. Since Thangavelu went on leave, a revised proceedings was issued for appointing one Rajendiran - P.W.9 as the Inquiry Officer. After completing the enquiry, P.W.9 - Rajendiran has submitted a report stating that a total sum of Rs.26,25,529/- have been misappropriated in the Bank during the relevant period.

3.4 On the complaint given by P.W.1 - Thandavamoorthy, Deputy Registrar of Co-Operative Bank, a case in Crime No.1 of 2003 of CCIW Police was registered and an F.I.R was prepared on 05.01.2003. P.W.10 - Deivasigamani, Inspector of Police, who registered the case took up the case for investigation and seized the relevant records and arrested the accused 1 and 2 namely Ravindranath and Boopathy respectively, on 05.01.2003 and sent them for remand. During the pendency of the investigation, P.W.10 got transferred to some other place so, P.W.11 - Pandari, Inspector of Police, succeeded him and continued the investigation. He examined the rest of the witnesses and completed his investigation and filed a charge sheet against the accused on 30.05.2005.

4. After the case was taken on file and on being satisfied with the materials available on record, the learned trial Judge has framed the charges against the accused for the offence under Sections 408 r/w. 35 and 477(A) r/w. 35 of IPC. When the accused were questioned, they pleaded innocence and claim to be tried.

5. During the course of the trial, on the side of the prosecution, 11 witnesses were examined as P.W.1 to P.W.11 and 16 documents were marked as Exs.P1 to P16. When the incriminating materials surfaced from the evidence of the complainant was put to the accused 1 & 2 under Section 313 Cr.P.C., they denied their involvement. On the side of the defence no witness was examined and no document is marked.

6. At the conclusion of the trial and on considering the evidence available on record, the learned trial Judge found the first accused guilty as under:-

Rank	Provisions under which convicted	Sentence
A1	408 IPC	Three months Rigorous Imprisonment and imposed a fine of Rs.500/- in default to undergo 15 days Rigorous Imprisonment
	477(A) IPC	Three months Rigorous Imprisonment and imposed a fine of Rs.500/- in default to undergo 15 days Rigorous Imprisonment

The sentences shall run concurrently.
The second was found not guilty and acquitted.

7. The Criminal Appeal preferred by the first accused in C.A.No.252 of 2011 before I Additional District and Sessions Judge, Vellore, was also dismissed on 10.08.2016. Aggrieved over that, the first accused preferred this present revision case.

8. Heard the learned counsel for the petitioner/first accused and the learned Government Advocate (Criminal Side) appearing for the respondent/State.

9. The learned counsel for the petitioner/first accused submitted that the Exhibits marked as Exs.P4 & P5 would show that the said Venugopal - P.W.5 had availed a loan of Rs.40,000/- from the Fixed Deposit and for which, he had executed the papers on 08.06.2001; the alleged receipt issued for Rs.16,000/- was not signed by the first accused; despite it is claimed that the first accused has affixed the signature, the same was not proved; the enquiry made under Section 81 of the Tamil Nadu Co-Operative Societies Act, should be completed within a mandatory period of three months and at the maximum extended time limit of six months; despite the Enquiry Officer was appointed on 11.07.2001, the enquiry report has been submitted only on 18.03.2002; hence, the inquiry report itself is violative of Section 81(4) and it is not valid; the case registered basing on the enquiry report itself is unlawful; the Day Book is not marked as a document by the prosecution though it is the best evidence; the learned trial Judge had acquitted the second accused; the Enquiry Officer has given a finding that both the accused were responsible for the affairs of the Bank; hence, the first accused alone cannot be found guilty for any offence and he should also have been acquitted.

10. The learned Government Advocate (Criminal Side) appearing for the respondent State submitted that the witnesses have deposed evidence stating that the first accused had misappropriated the difference in the amount sanctioned and amount disbursed as loan; the Officers of the Co-operative Bank who have conducted the enquiry and prepared the special report have also stated in their evidence about the misappropriation committed by the first accused; the learned trial Judge and the First Appellate Judge have appreciated the evidence in a proper perspective and found the first accused guilty and hence, it needs no interference.

11. Point for Consideration :-

Whether the finding of the guilt of the first accused for the offences under Sections 408 and 477(A) of IPC, based on the materials available on record is fair and proper?

12. It is seen from the judgment of the learned trial Court that despite three different allegations have been made, the first accused had been convicted for misappropriating a sum of Rs.24,000/- from the Fixed Deposit of P.W.5.

13. On perusal of Exs.P4, P5 & P12 produced before this Court, it is seen that P.W.5 has deposited a sum of Rs.50,000/- in the Fixed Deposit scheme for five years and three months. The rate of interest of loan for the above deposit is 13.5% p.a. The file would show that P.W.5 had signed the receipt for receiving a sum of Rs.40,000/- as loan. It is not the contention of P.W.5 that the signatures found in Exs.P4, P5 & P12 are not his signatures. The one and only document on which the prosecution attempted to stand its case is fixed deposit receipt given by the Co-Operative Bank. In the said receipt, the first accused did not affix his signature as submitted by the prosecution. The loan card is not signed by the first accused and its connection to the said receipt is not proved by the prosecution. It is alleged that the first accused has affixed his initials on the backside of the receipt to show that P.W.5 has taken the entire loan amount of Rs.16,000/-. But the said receipt has not been signed by the first accused. The rest of the documents available on file would show that in the month of June, 2001, a sum of Rs.40,000/- only was sanctioned for P.W.5 and for which, he has executed all the relevant loan documents. But the prosecution has not proved the case basing on Ex.P12 - loan file beyond reasonable doubt that it contained some false entries.

14. The learned trial Judge found the first accused guilty basing on the oral evidence of the prosecution witnesses. There is no dispute with regard to the signatures of the witnesses on the documents maintained by the Bank, in connection with their transactions. When the case of the prosecution is relied on the documentary evidence, it is the duty of the prosecution to bring the relevant documents and mark them as evidence before the Court. The borrowers are interested witnesses who would tend to avoid their liability to settle the entire loan amount availed by them by stating that they had availed a lesser amount. None of the borrower has given any complaint against any of the officials by stating that they had given with lesser amount but demanded to repay more.

15. When it is specifically alleged by the prosecution that certain entries have been made by the first accused, it should be proved that those entries have been made in the handwritings

of the first accused. In fact, the second accused who had got the duty to maintain the registers himself was found not guilty and acquitted. Further, the corresponding Day Books are also not produced to show that that misappropriation has been made by making false entries on them.

16. The fact about the handwritings of the first accused could be proved only by showing that the handwritings in the entries on the documents tally with his admitted handwritings. Further, the corresponding accounts were also not produced to show that there was a difference in the loan amount sanctioned and the loan amount disbursed. Without proving the above fundamental, the first accused cannot be found guilty merely on the basis of the oral evidence of the borrower.

17. Since the prosecution has omitted to produce the relevant documents, the Courts below ought to have given benefit of doubt to the first accused also and held that the charges against the first accused also not proved beyond reasonable doubts. Hence, the judgement of the Court below, warrants interference.

18. In the result, this Criminal Revision Case stands allowed and the judgment of the learned I Additional District and Sessions Judge, Vellore dated 10.08.2016 passed in C.A.No.252 of 2011 is hereby set aside.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

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

2. The Judicial Magistrate No.2,
   Vellore.

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

4. The Inspector of Police,
   C.C.I.W., C.I.D. Vellore.

5. The Public Prosecutor,
   High Court, Madras.

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

Crl.R.C.No.624 of 2017

GPL(CO)
CT 30/03/2022