

BAIL SLIP

The Petitioner/Accused viz., Sekar, 55 years, S/o.Kannan, was released on bail as per the order in CrI.M.P.No.7252 of 2017 in CrI.R.C.No.789 of 2017 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.04.2022

DELIVERED ON : 17.06.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.R.C.NO.789 OF 2017

Sekar

... Petitioner/
Accused

Versus

The State rep. by
The Inspector of Police,
C.C.I.W., C.I.D., Thiruvannamalai.
(Crime No.7/2006)

... Respondent/
Complainant

PRAYER : Criminal Original petition filed under Section 482 Cr.P.C. praying to call for the entire records in respect of judgment passed by learned I Additional District and Sessions Judge, Vellore, Vellore District in C.A.No.118 of 2011 dated 17.03.2017 confirming the judgment rendered by the Judicial Magistrate Court No.2, Vellore, Vellore District in C.C.No.345 of 2007 and set aside the same and acquit the petitioner.

For Petitioner : M/s.T.Sreelekha

For Respondent : Mr.R.Kishore Kumar
Government Advocate

O R D E R

This Criminal Revision Case is filed to set aside the judgment dated 17.03.2017 passed by the learned I Additional District and Sessions Judge, Vellore, in Crl.A.No.118 of 2011 confirming the judgment rendered by the learned Judicial Magistrate No.2, Vellore, Vellore District in C.C.No.345 of 2007 dated 18.04.2011 and to acquit the petitioner.

2. The petitioner/accused in C.C.No.345 of 2007 was convicted by the learned Judicial Magistrate No.II, Vellore by judgment dated 18.04.2011. The learned Judicial Magistrate acquitted the petitioner for the offence under Sections 467 and 471 I.P.C. and convicted him for the offence under Sections 408 and 477 I.P.C. and sentenced him to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1,000/- for the offence under Section 408 I.P.C. and one year Rigorous Imprisonment and to pay a fine of Rs.1,000/- for the offence under Section 477-A I.P.C. The sentences are directed to run concurrently. Aggrieved by the said judgment, the petitioner preferred an appeal before the I Additional District and Sessions Judge, Vellore in Crl.A.No.118 of 2011. The learned Sessions Judge by judgment dated 17.03.2017 dismissed the appeal confirming the conviction and sentence passed by the trial Court, against which the present revision.

3. The case against the petitioner is that the petitioner was working as Secretary incharge of Nammiyanpattu Tribes Multi Development Co-operative Society from 06.05.2000 to 02.03.2006. On the complaint of Selvamaniam/P.W.1-Deputy Registrar, Central Co-operative Bank, Tiruvannamalai dated 24.07.2006, a case came to be registered by P.W.14. on 23.12.2006. The Petitioner as Secretary of the society is bound to maintain all the registers and records including day book without any irregularities. While discharging his duty during the year 2002-2003, the Government ordered to pay drought relief to 646 farmers and for that purpose a sum of Rs.1,59,388/- and Rs.57,370/- was credited to the Society account. Hence, there was a total amount of Rs.2,16,758/- as drought relief to be given to the eligible farmers and members. The petitioner had withdrawn Rs.1,00,000/- and Rs.57,370/- from the Central Co-operative Bank through Cheque dated 22.07.2003 and 24.07.2003 and without disbursing the amounts to the farmers, the petitioner misappropriated the same. Further, one Duraisamy residing at Kanamalai made a Fixed Deposit of Rs.15,000/- on 29.04.1998 and the same was closed on 02.09.2003 and a principal amount of Rs.15,000/- and interest of Rs.9,750/-, in total Rs.24,750/- was paid to the said Duraisamy. The same was entered in the day book. Again this petitioner withdrawn a cash of Rs.24,750/- and closed the Fixed Deposit and

misappropriated a sum of Rs.24,750/-. Further, the petitioner received Rs.21,328/- as drought relief fund. Without paying the relief fund to the weavers, the petitioner made false entry as though payments were made. Thus, in total he misappropriated a sum of Rs.2,53,886.50. P.W.12 caused enquiry under Section 81 of the Co-operative Societies Act against the petitioner through proceedings/Ex.P2. Thereafter P.W.2/Sub Registrar of Co-operative Society conducted an enquiry and found that the petitioner misappropriated the society funds and submitted his enquiry report/Ex.P26. Thereafter, P.W.1 lodged a complaint. P.W.14 received the complaint, proceeded with the investigation, examined witnesses, collected documents, of which, P.W.3 to P.W.11 are the society members and agriculturists. Hence, on conclusion of investigation, charge sheet filed for the offence under Sections 408, 467, 471 and 477-A I.P.C. on 16.06.2007.

4. During trial, P.W.1 to P.W.14 examined and Exs.P1 to P27 marked. On the side of the defence neither witnesses examined nor documents marked. On conclusion of trial, the trial Court convicted the petitioner and the Lower Appellate Court confirmed the conviction as stated above.

5. The contention of the petitioner is that the trial Court on the evidence of the witnesses acquitted the petitioner for offence under Sections 467 and 471 I.P.C. but on the same evidence convicted the petitioner under Sections 408 and 477-A I.P.C. is not proper. P.W.12/Enquiry officer admitted that the drought relief was to be paid to 852 beneficiaries, but the prosecution has not chosen to examine these 852 farmers. Without examining the material witnesses, had wrongly come to the conclusion that the petitioner committed misappropriation. Further, P.W.12 did not depose how payment will be made through Silk Development Board and admitted in his cross examination that there is a proof to show that the amount has been disbursed. One of the conditions for payment of drought relief is that the agriculturists to produce chitta, adangal and other documents to substantiate that they owned the land and they are tillers of the land. Further, they suffered failure of harvesting due to drought, which has to be confirmed by the Village Administrative Officer, thereafter only they are eligible for drought relief. P.W.3 states that she has not received drought relief fund but she admits that she has not produced proof to show that she is a farmer and forms viz., Chitta, Patta and Adangal. In this case, the beneficiaries are P.W.3 to P.W.11 and P.W.13. P.W.4 apart from stating that she had not received any drought relief, she had not stated about production of necessary documents. P.W.5 to P.W.10 admit that they received the drought relief fund from the Society, of which, P.W.7 to P.W.10 were treated as hostile. P.W.11 and

P.W.13 admit that they owned no lands and hence, received no drought relief. Added to it, P.W.13 states that he is not a member of the society. With these evidence, the petitioner cannot be convicted for not disbursing the drought relief to the beneficiaries. The only evidence available is P.W.12-Enquiry Officer. P.W.12 admits that there is some proof to show that the relief amount has been disbursed to the beneficiaries. Further, P.W.12 in his enquiry report given a finding against the petitioner based on the daily register and drought relief register. Further, the statement of one Renu, Special Officer, Kuppusamy and Mani, Salesmen of the society were marked. This statement cannot be looked into, considered as a document in evidence. The said Renu, Special Officer admits that she is the Joint signatory to the cheques. Both the Special officer and the petitioner signed the cheques, presented the same and received the funds allotted to the society from the Central Co-operative Bank and thereafter it has been disbursed. In the day book register the relevant entries are recorded and also the particulars of the vouchers and disbursement have been recorded. He further submitted that none of the farmers have complained that they have not received the drought relief. Earlier, several anonymous complaints received by the officials of the Co-operative society based on which, an enquiry was conducted. Most of the witnesses have stated that they have not sent any complaint. Further, with regard to other aspect of procurement from the farmers, disbursement in the fair price shop, expenditure for maintenance of the vehicle and other allegations made against the petitioner, all found to be false. The enquiry officer not properly verified the registers and other documents. Further, without examining any of the farmers and beneficiaries, giving such finding is not proper. The trial Court acquitted the petitioner for two charges, namely, offence under Sections 467 and 471 I.P.C. On the same evidence ought not to have convicted the petitioner under Sections 408 and 477-A I.P.C. Hence, prayed for acquittal.

6. Learned Government Advocate appearing for the respondent Police submitted that P.W.2/Deputy Registrar of Thiruvannamalai Co-operative Society, received a complaint from Nammiyampattu tribes regarding serious irregularities against the petitioner, who is the Secretary of the Society. Thereafter, he ordered enquiry under Section 81 of Co-operative Societies Act, nominating P.W.12, the Sub-Registrar of Co-operative Society as the Enquiry officer, who conducted enquiry, examined the witnesses, collected documents thereafter gave enquiry report/Ex.P26 finding that the petitioner misappropriated huge sums of the society to the tune of Rs.2,53,886.50 in disbursement of drought relief fund to the farmers as well as to the silk weavers and further by making double entry in repayment

of Fixed Deposit to one Duraisamy and enriched himself by falsifying the accounts of the society. Thereafter, P.W.1 lodged a complaint to P.W.14, who registered F.I.R./Ex.P27, examined witnesses, collected documents and filed a final report. P.W.1, P.W.2 and P.W.12 are the officials of the Co-operative department. P.W.3 to P.W.11 and P.W.13 are the villagers and beneficiaries. They stated that they have not received drought relief. The enquiry report/Ex.P26 of P.W.12 is detailed one, wherein he stated that three complaints dated 10.05.2005, 26.05.2005 and 30.05.2005 had been received and thereafter, he framed issues for the enquiry, for misappropriation of drought relief fund and also misappropriation on the amount received from Silk Development Board and for making double entry for the repayment of Fixed Deposit. During enquiry, he examined 10 agriculturists, who have stated that they have not received any drought relief. Thus on the statement of witnesses examined and the documents collected, the enquiry officer had found that the petitioner committed misappropriation of the society funds to the tune of Rs.2,53,886.50 and given his report/Ex.P26. Before the trial Court, P.W.1 to P.W.14 examined and Exs.P1 to P27 marked. On the evidence of the witnesses and documents, the trial Court convicted the petitioner. The petitioner is a Secretary, which is not in dispute. The petitioner, who was entrusted with the society funds and administration of the society, had withdrawn the amount from the Central Co-operative Bank, not handed over to the beneficiaries and misappropriated the same. There is no voucher in support of the disbursement, except for few persons as could be seen from the drought relief register. Thus the petitioner's entrustment is proved and thereafter it is for the petitioner to justify that the amount has been disbursed and there was no misappropriation, but failed to do so. The trial Court rightly convicted the petitioner and the Lower Appellate Court independently assessed the evidence and materials and confirmed the conviction. Hence, prayed for dismissal of the revision.

7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. Considering the submissions and on perusal of the materials, it is not in dispute that the petitioner was the Secretary from 06.05.2000 to 02.03.2006 of the Nammiyanpattu Tribes Multi Development Co-operative Society. He faced four charges. Charge No.1 pertains to withdrawal of Rs.24,750/- in Cheque No.006444 from the Thiruvannamalai District Central Co-operative Bank and thereafter prepared forged acquittance. Charge No.2 pertains to petitioner forging signature of one Duraisamy in the above cheque. For these two charges the petitioner had been acquitted. Charge No.3 pertains to

disbursement of drought relief fund to 646 agriculturists for which he received Rs.2,16,758/- from the Central Co-operative Bank, of which, he had shown as though Rs.2,08,548/- has been disbursed to the agriculturist without any record. Likewise, false entries has been made to show that Rs.24,750/- paid to Duraisamy for foreclosing the Fixed Deposit, which is a double entry. The sum and substance is that the petitioner in total misappropriated Rs.2,53,886.50. Charge No.4 is that false entries have been made in daily registers as though payments made to the beneficiaries on the various dates as well as to the said Duraisamy thereby falsifying the society records. It is seen that in this case P.W.1 lodged a complaint after getting information that society not functioning properly. There has been misappropriation, falsification of accounts as well as in procurement of materials from the agriculturist and in the fair price shop. The petitioner was demanding money from his salesman and not having proper control over the functioning of the society and its assets. Several complaints received, thereafter P.W.2 caused enquiry under Section 81 of the Co-operative Societies Act. P.W.12-Sub Registrar of Co-operative Society was nominated as Enquiry officer. Ex.P1 is the complaint lodged by P.W.1. Ex.P2 is the proceedings nominating P.W.12. P.W.12 conducted enquiry, examined witnesses and submitted his enquiry report/Ex.P26.

9. Apart from his report, statement of P.W.3 to P.W.10 has been marked as Exs.P3 to P8 and statement of one Renu - Special Officer, Kuppusamy and Mani marked as Exs.P23 to P25 and Exs.P9 to P22/daily register, cheques, bank advise, drought relief register, cash receipt, permanent receipt marked. P.W.12 in his evidence admits that drought relief to be disbursed on the list provided by the Village Administrative Officer to give a list of beneficiaries, land availing particulars and the harvest particulars. Admittedly, no Village Administrative Officer examined in this case. P.W.12 further admits that there are totally 852 agriculturists to whom the drought relief paid and he had not examined those 852 persons. An amount of Rs.21,328.50 was received from the Silk Development Board and the disbursement of false amount has been recorded in Ex.P18. Likewise he admits that for the payment of fixed deposit to one Duraisamy a sum of Rs.24,750/- is a double entry, which has been subsequently reversed for which he feigns ignorance that he has not verified the same. He admits that Special Officer one Renu is the joint signatory and jointly responsible for the funds of the society. Both the Renu and the petitioner signed cheques, received the amount thereafter bring it to the accounts of the society and disbursed the same. In his enquiry report he categorically holds it is the joint responsibility of the said Renu and petitioner. But strangely Renu has not been made as an

accused in this case. When it is admitted that it is a joint responsibility, both the person concerned to be proceeded unless there are materials to exclude one of them. In this case, there is no evidence and materials for the same. Further, P.W.12 admits that none of the beneficiaries with regard to the drought relief fund examined by him and he only examined 10 persons pertaining to the relief given by the Silk Development Board. In this case, witnesses P.W.3 to P.W.11 and P.W.13 are the agriculturists. P.W.3 and P.W.4 though state that they have not received any drought relief fund, they admit that they have not produced chitta, patta, adangal or any documents to prove that they are holding lands and suffered failure in harvesting. P.W.5, P.W.6 and P.W.7 admit that they have received drought relief fund. P.W.7 to P.W.10 admit that they have received drought relief fund, but they were treated as hostile. P.W.11 and P.W.13 admit that they have not received drought relief since they had not owned any land. Thus from the evidence of the agriculturist there is nothing against the petitioner. Now the only evidence is that of P.W.12-Enquiry officer. From his report/Ex.P26, the enquiry officer jointly fixed the responsibility on the Special Officer - Renu and the petitioner and for what reason no action has been taken against Renu is not known. In his report he had given a finding that day book register, preparation of vouchers no reference available and payment of drought relief, hence committed misappropriation. In this case, none of the beneficiaries for drought relief have been examined by P.W.12, which is admitted by him. On the other hand, P.W.3 to P.W.11 and P.W.13 admit that they have received the drought relief fund and the persons who have not received admit that they have not produced relevant documents and also they own no lands. With regard to the double payment and entry made in the society for foreclosure of Fixed Deposit, the said Duraisamy has not been examined as a witness and the only material is the day book register, resolution book, daily register, cheques, bank advise and drought relief register. The cheques, bank advise are not disputed and found to be prepared under mischievous circumstances. The only dispute is that whatever has been recorded in the day book are not supported with relevant documents. The entries in the day book categorically state about the vouchers particulars. There is nothing in the enquiry report to state that the vouchers were called for from the society and it is not available. Despite the Special Officer, three salesmen, Van driver, watchman of the society examined by enquiry officer, none examined as witness. Special Officer - Renu in her statement/Ex.P23 absolves petitioner for the allegations made against him except for the complaint dated 10.05.2005. Periannan and Settu, who had been examined by the Enquiry officer categorically state that they have not sent any complaint against the petitioner. Further,

major portion of the complaint were found to be false. The enquiry officer finding that no corresponding documents to the entries made in the day book register not produced, hence fixed the responsibility on the petitioner.

10. Further it is seen that along with cheques, two covering letters addressed by the Special Officer dated 02.09.2003 and 09.01.2004, sent to the Branch Manager of Central Co-operative Bank. In the covering letter dated 02.09.2003 it is recorded that a sum of Rs.2,16,758/- was sanctioned to the society as drought relief fund, of which, an amount of Rs.1,57,370/- has been received by the society. Out of which, an amount of Rs.1,47,310/- has been paid to 629 beneficiaries and remaining 224 beneficiaries has to be paid. Further, the balance of Rs.69,448/- of the drought amount as well as Rs.59,388/- of the society amount has been recorded. Likewise in the letter dated 09.01.2004 the amount of Rs.21,328.50 received from the Silk Development Board towards drought relief fund, to be paid to 76 persons has been recorded. Thus the Special Officer Renu was aware about the drought relief fund, involved in the withdrawal and disbursement of the drought amount to the beneficiaries. In this case P.W.14-Investigating Officer except going by the enquiry report/Ex.P26 of the enquiry officer/P.W.12 he has not conducted investigation, examined any witnesses or collected any details. From the evidence and materials it is seen that P.W.12 despite finding that the petitioner and the Special Officer are jointly responsible for the funds of the society for the reasons best known to him fixed the responsibility on the petitioner alone. Even during enquiry he admits that he had examined only 10 persons and majority of the members of the society not examined. He admits that there are 852 eligible agriculturists for the drought relief scheme and except for the 10 persons he has not examined any of them. In the absence of examining beneficiaries, P.W.12 given a finding that beneficiaries have not been paid and the entries made in the day book register is false and thereby the petitioner committing misappropriation by false entry in the registers and thereby falsifying accounts cannot be stated to be conclusively proved against the petitioner. In view of the same, this Court is inclined to set aside the conviction and sentence passed by the trial Court. The petitioner without prejudice to his contention filed an affidavit of undertaking stating that he will deposit a sum of Rs.1 lakh to the credit of Nammiyanpattu Tribes Multi Development Co-operative Society.

11. Accordingly, this Criminal Revision Case is allowed. The judgment of conviction and sentence passed by the learned I Additional District and Sessions Judge, Vellore in CrI.A.No.118 of 2011 dated 17.03.2017, confirming the order of conviction

passed by the learned Judicial Magistrate-II, Vellore in C.C.No.345 of 2007 dated 18.04.2011 are set aside and the revision petitioner is acquitted of the charges.

Sd/-
Assistant Registrar(CS-V)

//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. The Inspector of Police,
C.C.I.W., C.I.D.,
Thiruvannamalai.
4. The Secretary,
Nammiyanpattu Tribes,
Multi Development Co-operative Society,
Thiruvannamalai.
5. The Public Prosecutor,
High Court, Madras.
6. The Section Officer,
Criminal Section (Records),
High Court, Madras.

+1cc to Mr.D.Rajagopal, Advocate, S.R.No.36542

Cr1.R.C.No.789 of 2017

SVI(CO)
RLP(20/07/2022)