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Crl.R.C.Nos.1704 to 1708 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Crl.R.C.Nos.1704 to 1708 of 2016

1.Veeraragavan (died) ... Accused No.1
2.Jayakantham
3.Kathir
4.Aruna

(Petitioners 1 to 3 impleaded as per order dated 28.02.2022
in Crl.M.P.Nos.2129 to 2133 of 2022).

... Petitioners in all Crl.R.Cs

Vs.

State Rep. by Inspector of Police,
C.C.I.W.C.I.D.,
Thiruvannamalai,
Thiruvannamalai District.
(Crime No.5 of 2004)

... Respondent in all Crl.R.Cs

Prayer in all Crl.R.Cs: Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for the records on the file of the learned 1st Additional District and Sessions Judge, Vellore, Vellore District in Crl.A.Nos.208, 212, 207, 211 & 206 of 2010 dated 25.10.2016 confirming the judgment in C.C.Nos.393, 398, 392, 397 & 390 of 2007 on the file of the Judicial Magistrate No.II, Vellore, Vellore District dated 17.08.2010 and set aside the judgment dated 25.10.2016.



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In all Crl.R.Cs:

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For Petitioners
For Respondent

... Mr.E.Kannadasan
... Mr.R.Murthi,
Govt. Advocate (Crl.Side)

COMMON ORDER

These Criminal Revisions have been filed to call for the records on the file of the learned 1st Additional District and Sessions Judge, Vellore, Vellore District in Crl.A.Nos.208, 212, 207, 211 & 206 of 2010 dated 25.10.2016 confirming the judgment in C.C.Nos.393, 398, 392, 397 & 390 of 2007 on the file of the Judicial Magistrate No.II, Vellore, Vellore District dated 17.08.2010 and set aside the judgment dated 25.10.2016.

2. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.Side) for the respondent.

3. The deceased revision petitioner is the first accused in the case. The first accused was appointed as a Secretary of Vandavasi Primary Agricultural Co-operative Bank and he served as a Secretary for the period between 01.05.1993 and 22.10.2002. He is empowered to sign all the receipts on behalf of the Society and he is responsible for all the income



and the expenses of the Society. He has to verify the stock in hand and keeping the same in Iron Coffers of the Bank by using double keys. Out of the two keys, one will be in the custody of the petitioner and other will be in the custody of the Senior Clerk / Cashier who is responsible for stock of fertilizer along with one Saminathan. The second accused served as a Cashier and the third accused was the President of Vandavasi Primary Agricultural Co-operative Bank.

4. The case of the prosecution is that the accused 1 to 3 have entered into a criminal conspiracy among themselves for committing breach of trust and misappropriation of the funds of the Bank and in order to achieve that end, they made false entries in the daily chitta in such a way that the loans were granted to the members of the Society and swindled the amount without disbursing the loan or by writing inflated figures than the actual loan disbursed. In view of the various such transactions and false entries found in the records maintained by the Society, Sec 81 enquiry was ordered and the report was submitted. Consequently, the Deputy Registrar has given a criminal complaint against the deceased petitioner and others. After the investigation was completed, the accused 1 to 3 were charged for the



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offences under Sections 408, 409 and 477(A) of IPC. After completion of the trial, the Trial Court found the accused 1 and 2 guilty for the offence under Sections 406 r/w 35 and 477(A) r/w 35 of IPC and convicted them to undergo one year rigorous imprisonment and a fine of Rs.500/-, in default to undergo one month simple imprisonment for each of the offences under Section 406 r/w 35 and 477A r/w 35 of IPC. The third accused was acquitted by the Trial Court.

5. An appeal has been preferred challenging the above said judgment. The learned Appellate Judge confirmed the judgment of the Trial Court as against the first accused. However, the conviction as against the second accused was set aside. So the first accused had preferred this revision. The amount misappropriated in Crl.R.C.No.1704 of 2016 is Rs.4,74,963/-, Crl.R.C.No.1705 of 2016 is Rs.1,13,400/-, Crl.R.C.No.1706 of 2016 is Rs.15,84,378/-, Crl.R.C.No.1707 of 2016 is Rs.80,313/- and Crl.R.C.No.1708 of 2016 is Rs.94,080/-. So, the total amount said to have been misappropriated in all the above said cases is Rs.23,47,134/-.



6. The learned counsel for the petitioners submitted that during the pendency of the revision proceedings, the petitioner died on 27.08.2020; subsequently, the legal heirs of the petitioner have been impleaded as petitioners 2 to 4; the deceased petitioner was convicted to undergo one year rigorous imprisonment and fine of Rs.500/- each for the offences under Section 406 r/w 35 and 477A r/w 35 of IPC. It appears that the fine amount has already been paid in all the cases.

7. The contention of the learned counsel for the petitioners is that on the strength of the findings recorded by the learned Trial Court about the guilt of the deceased petitioner, the recovery proceedings should not be initiated against the petitioners by attaching either the properties belong to them or the properties inherited by them from the deceased petitioner. The learned counsel for the petitioners further submitted that the enquiry conducted under Section 81 of the Co-operative Societies Act would reveal that there are totally five accused involved in the occurrence; but so far, no recovery proceedings have been initiated.



8. The criminal case cannot be conducted like recovery proceedings; the petitioners are at liberty to contest the recovery proceedings if any basing on the materials available with them irrespective of the findings rendered in this criminal case.

9. The learned Government Advocate (Crl.Side) submitted that after completion of a detailed and elaborate investigation, the charge sheet has been filed and the properties of the deceased petitioner is liable to be attached for the amount misappropriated by him during the tenure as Secretary.

10. As it has been stated already, the records would show that the amount which is alleged to have been misappropriated and the interest added on the said amount would come to Rs.1,29,77,016/-. The said fact has been revealed in the counter filed by the respondent. If the enquiry report of the Special Officer reveals that there are totally five persons who are responsible and an order has been passed by the Deputy Registrar in this regard in Da.Va.No.890/2002-2003 and the same has not been challenged so far. Since the recovery proceedings has got nothing to do



with the criminal proceedings, it is open to the authorities to initiate recovery proceedings irrespective of criminal proceedings. In view of the death of the deceased petitioner, the sentence imposed on him has become infructuous, Hence, I find no reasons to keep these Revisions pending.

11. The learned Trial Court and the First Appellate Court have appreciated the evidence basing upon the statement of witnesses and found that the first accused is guilty for the offences for which he was charged with. Whatever may be the case, the petitioners who are the legal heirs of the deceased can be issued with the notice to submit their objections, if any, for attaching the properties during the course of the recovery proceedings and participate in the proceedings. Since the petitioners are entitled to face any proceedings subject to the principles of natural justice, opportunities can be given to them to submit their contentions. Baring these observations, I do not think these revisions should be pending unnecessarily.



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R.N.MANJULA,J.

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12. With the above observations, the Criminal Revisions in
Crl.R.C.Nos.1704 to 1708 of 2016 are disposed.

02.02.2023

Index: Yes/No
Internet: Yes/No
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To

1.1st Additional District and Sessions Judge,
Vellore, Vellore District.

2.The Judicial Magistrate No.II,
Vellore, Vellore District

3.The Inspector of Police,
C.C.I.W.C.I.D.,
Thiruvannamalai,
Thiruvannamalai District.

4.The Public Prosecutor,
High Court, Madras.

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