IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.01.2023

PRONOUNCED ON : 08.02.2022

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Revision Case No.497 of 2020

1. R.Sengodan
2. M.Sridharan ... Petitioner

Vs.

The State Rep By
The Inspector of Police
Vigilance & Anti-Corruption Unit
Puducherry ... Respondent

PRAYER: The Criminal Revision case is filed under under Section 397 read with 401 of the Code of Criminal Procedure, 1973 praying to set aside the Judgment conviction passed against the Revision Petitioners by the learned Chief Judicial Magistrate, Puducherry in C.C.No.102/2006 by its Judgment dated 14.12.2016 which was confirmed by the First Appellate Court in C.A.No.3/2017 on the file of the learned II Additional Sessions Judge, Puducherry by its order dated 16.03.2020 and thereby acquit them of all charges.

For Petitioners : Mr.J.Suresh

For Respondent : Mr.V.Balamurugane
Public Prosecutor (Puducherry)

ORDER

The Criminal Revision Case has been filed seeking to set aside the Judgment of conviction and sentence passed against the revision petitioners by the learned Chief Judicial Magistrate, Puducherry, in C.C.No.102 of 2006 by Judgment dated 14.12.2016 which was confirmed by the First Appellate Court in C.A.No.3 of 2017 on the file of the II Additional Sessions Judge, Puducherry, by Judgment dated 16.03.2020 and acquit them from all charges.

2. The respondent police registered the case against the petitioners in Crime No.6 of 2000 for the offences under Sections 408, 468, 477(A) read with 34 IPC and after completing the investigation, laid the charge sheet before the Chief Judicial Magistrate, Pondicherry and the same was taken on file in C.C.No.102 of 2006. The learned Magistrate after completing the formalities, framed the charges against the accused for the offences under Sections 409, 468 and 477(A) IPC read with 34 IPC and on conclusion of the trial, found the accused guilty for the offences under Sections 409, 468, 477(A) IPC read with 34 IPC and convicted and sentenced them to undergo 6 months simple imprisonment each and to pay fine of Rs.500/- each indefault, to undergo simple imprisonment for a further period of

one month each for the offence under Section 409 IPC read with 34 IPC; to undergo 6 months simple imprisonment each and to pay fine of Rs.500/- each indefault to undergo simple imprisonment for a further period of one month each for the offence under Section 468 IPC read with 34 IPC; to undergo 6 months simple imprisonment each and to pay fine of Rs.500/- each indefault, to undergo simple imprisonment for a further period of one month each for the offence under Section 477(A) IPC read with 34 IPC.

3. Challenging the said judgement of conviction and sentence, the accused filed appeal before the Principal District and Sessions Judge, Puducherry and the learned Principal District and Sessions Judge, taken the appeal on file in C.A.No.3 of 2017 and the same was made over to the II Additional Sessions Judge Puducherry. The learned Additional Sessions Judge, after hearing the arguments and re-appreciating the evidence, dismissed the appeal and confirmed the conviction and sentence imposed by the trial Court in C.C.No.102 of 2006 dated 14.12.2016.

4. Aggrieved over the said Judgment of dismissal of appeal, the appellants therein, have filed the present revision before this Court.

5. The learned counsel for the petitioners would submit that in the original complaint lodged by P.W.1, amount of misappropriation is mentioned as Rs.3,62,612.35/- by the first petitioner alone and the first and second petitioners jointly misappropriated Rs.27,050/-. Subsequently, after investigation it was alleged that the first petitioner misappropriated a sum of Rs.11,845/- and both the petitioners jointly misappropriated the loan amount to the tune of Rs.24,955/-, whereas P.W.50/the Inspector of Police has deposed that in the charge sheet, the amount was wrongly figured due to over sight which clearly shows that the investigation was not properly done and the charge sheet did not reflect the actual outcome of the investigation. Further he would submit that P.W.2 and P.W.3 during their cross examination have stated that the petitioners have not misappropriated any money of the members of the Co-operative Society and thereby, they were declared as hostile witnesses. Further, the witnesses P.W.3 to P.W.42 are all members of the said Co-operative Society and they all have stated during chief examination that they had availed loan and repaid the same to the bank on their own and that the accused have not done any misappropriation of the

money of them which clearly shows that the petitioners have not misappropriated any money of the members of the Co-operative Society. But the above said witnesses were not enquired by the auditor or by the Investigating Officer which clearly shows that the investigation was not done in a fair manner and that the Investigating Officer has not examined the relevant persons. Therefore, it is clear that the case was registered wrongly against the petitioners based on the defective audit report and investigation report. The learned counsel for the petitioners would submit that though the petitioners not denied that during the said period, the petitioners were working as Manager/A1 and Clerk/A2 in the said Co-operative Society as stated by the prosecution, the prosecution has not produced any document and proved that during the relevant period, the petitioners were working in the said Co-operative Society and they were responsible for the misappropriation. Further he would submit that the prosecution has not brought any office bearers of the Primary Agricultural Co-operative Society which is Governed by its President, Secretary and 3 Board of Members, into the record as witnesses in proving the case of the prosecution. But the president of the above said Co-operative Society was examined as witness on the side of the defence as D.W.1 wherein, he has stated that he did not know about the volume/quantity of the money misappropriated by the petitioners and that the members of the Society borrowed loan and repaid the same to the bank which itself clearly shows that there is no misappropriation. The prosecution has not proved that the petitioners misappropriated the funds of the members of the Society**.** Even the Administrator of the Co-operative Society was summoned and examined on the side of the defence as D.W.2 and he has stated that he filed the accounts papers which were marked as Ex.D1. As per Ex.D1, a sum of Rs.2,25,707/- was repaid by the members themselves out of the alleged misappropriated money of Rs.3,62,612.35/- and he has also stated that yet some members have not repaid the remaining amount to the bank and some of the members passed away prior to the deposit of the loan amount into the bank which also clearly shows that no misappropriation was made by the petitioners and the trial Court as well as the appellate Court failed to appreciate and re-appreciate the evidence and erroneously given findings that the petitioners were found guilty for the charged offences. Further he would submit that domestic enquiry was conducted by the Co-operative Department but till now, it is not known about the outcome of the said domestic enquiry which clearly shows that the defacto complainant has no case at all. He would further submit that the defacto complainant/P.W.1 conducted re-auditing. But it was not done properly which can be known through the examination of the 40 members of the said Co-operative Society who have stated that no enquiry was conducted on them. Further, the defacto complainant/P.W.1 obtained signatures from the petitioners by making false assurance that he would close the issue by himself, but he lodged the complaint against the petitioners. He would submit that when the members of the Society themselves admitted that they have borrowed money and repaid the same to the bank, there is no question of forgery and misappropriation. But both the trial Court as well as appellate Court have failed to appreciate and re-appreciate the evidence and erroneously convicted the petitioners and therefore, the findings of the Courts below are perverse. Therefore, the present revision has to be allowed. The Judgments of both the Courts below are liable to be set aside and the petitioners have to be acquitted.

6. The learned Public Prosecutor (Puducherry) would submit that in the year 1999, P.W.1 who was the then Junior Inspector, of the Co-operative Department, conducted audit in the Primary Agricultural Co-operative Bank Ltd., Karaiyanputhur and during his audit, it was found that the petitioners had misappropriated the funds. Therefore, he made a complaint and based on the

complaint, the respondent police registered the case and investigated the matter and from the material evidence, it was found that the petitioners had misappropriated the funds and the same was also proved by the prosecution through oral and documentary evidence. Though on the side of the defence two witnesses were examined, nothing was elicited. The entire records clearly shows that the first petitioner was working as a Manager and the second petitioner was working as a Clerk in the said Co-operative Bank and they both were responsible for the day to day affairs of the said Bank at Karaiyanputhur. Both the trial Court and the appellate Court rightly appreciated the evidence and found the guilt of the petitioners and convicted and sentenced them as stated above. Therefore, there is no merit in the revision and the revision is liable to be dismissed.

7. Heard the learned counsel for the petitioners and the learned Public Prosecutor (Puducherry) and perused the materials available on record.

8. The specific case of the prosecution is that the first petitioner was the Manager and the second petitioner was the Clerk of Karaiyanputhur Primary Agricultural Co-operative Bank limited, Puducherry and when they were entrusted

with the money transactions in the said bank, had misappropriated money to the tune of Rs.3,62,612.35/- on various dates. The first petitioner/A1 dishonestly misappropriated a sum of Rs.11,845/- without crediting the amount remitted by the borrowers towards their loan/by way of non disbursement of entire loan sanctioned to the members/by disbursing only portion of loan to the members/by taking loan on the cash certificate without the knowledge of the cash certificate holder/ by withdrawing money from the savings account of members/ not crediting the loan and interest paid by the members/by suppressing the stock of fertilizer/ by suppressing the sale proceeds of the controlled commodities/by manipulating the loan ledger, Fixed Deposit Register, Cash Certificate Deposit and savings deposit registers etc. Further in the course of the same transaction, the first petitioner/A1 also manipulated the relevant ledgers and registers of the bank and prepared false documents such as withdrawal slip, Society Chalan, Counterfoil etc. for the purpose of cheating with an intent to cause damage or injury to the complainant's bank and the borrower with an intent to commit fraud. In the course of the same transaction, with an intent to defraud the complainant's bank and borrower, falsified the bank accounts by suppressing the stock of fertilizer, by suppressing the sale proceeds and sale of the controlled commodities, by manipulating the figures of the bank loan and interest in the relevant day books and by manipulating the relevant ledgers and registers. Further the petitioners 1 and 2/A1 and A2 jointly infurtherance of common intention misappropriated the loan amount Rs.24,955/- of the society as if the amount was disbursed to the loan holders and made false entry in the Day Book of the bank and misappropriated a sum of Rs.2100/-. Therefore, both the petitioners have committed the offences under Sections 409, 468, 477(A) IPC read with 34 IPC.

9. In order to prove the charges framed against the accused, on the side of the prosecution totally 50 witnesses were examined and 105 documents were marked. On the side of the defence two witnesses were examined and one document was marked. The trial Court after trial, found the guilt of the accused and convicted and sentenced them as stated above. When the accused filed appeal, the appellate Court also dismissed the same and therefore, the present revision has been filed by the accused before this Court.

10. Out of the 50 witnesses examined on the side of the prosecution, the Senior Inspector of Co-operative Department was examined as P.W.1 and he has stated that while he was working as a Junior Inspector, he conducted auditing for

the year 1994 - 1995 in the Primary Agricultural Co-operative Bank Limited, Karaiyanputhur and during the relevant point of time, A1/first petitioner herein was working as a Manager and A2/second petitioner herein was working as a Clerk. During his audit, he found that there was discrepancies and irregularities and misappropriation of funds as stated above and after conducting the audit, he filed the audit report to P.W.43/the then Deputy Registrar. On a perusal of the audit report, P.W.43 directed him to lodge a complaint before the Vigilance and Anti Corruption Unit and therefore, he preferred a complaint/Ex.P.1 and also enclosed the account particulars/Ex.P.2. Further, he handed over the account books, re-auditing report/Ex.P.3 and short term loan register/Ex.P.4, loan register pertaining to the big farmers/Ex.P.5. In the said register, the loan advanced to the members particulars were all mentioned. Further he would submit that the petitioners did not credit the loan which was repaid by the members in the relevant registers. During the audit, he further found that there was misappropriation under various heads and he found that the petitioners received the loan amounts towards instalments and failed to give correct credit in their accounts. The relevant documents were marked as Ex.P.7 to Ex.P.29, Ex.P.78 and Ex.P.79. With reference to disbursement of loan amount, P.W.1 found during the audit that the petitioners had misappropriated the amount and he verified the relevant documents with the relevant registers viz., Ex.P.30 to Ex.P.64 and Ex.P.94. As per Ex.P.68 to Ex.P.72, the petitioners misappropriated the amount from the Fixed Deposit head, deposited by the members namely Anbalzhagan and Muthulakhsmi and the petitioners also misappropriated the subsidy amounts of the members and the relevant entries in the register also marked as Ex.P.65 to Ex.P.67. In that way, the petitioners also misappropriated the funds under various headings viz., fertilizer, non controlled cloth, Baniyan and Groceries. Therefore, based on the direction given by P.W.43, P.W.1 set the law into motion by filing the complaint with the respondent police.

11. One of the members of the society was examined as P.W.2 and he has deposed that the first petitioner was working as Manager and the second petitioner was working as a Clerk in the said Society where he availed loan and he also repaid the same through the first petitioner/A1. But the first petitioner/A1 did not credit the repayment amount made by him and misappropriated the said amount.

12. P.W.3 is also one of the members of the said Society and he also stated the same and corroborated the evidence of P.W.2.

13. When the Deputy Registrar in the Audit Section of the Co-operative Department was examined as P.W.43, he has deposed that in the year 1999, he issued an Office Order to P.W.1 to conduct audit in the Karaiyanputhur Primary Agricultural Co-operative Bank for the year 1994-1995. As per the audit report filed by P.W.1, the first petitioner/A1 had misappropriated a sum of Rs.3,62,612.35/- and A2/the second petitioner had misappropriated Rs.24,955/- and Rs.2,100/- and therefore, he directed P.W.1 to prefer a complaint before the Vigilance and Anti Corruption Unit based on the audit report and the Office Order was marked as Ex.P.101.

14. Therefore, it is clearly seen that based on the order passed by P.W.43, P.W.1 conducted the audit and based on the audit report, P.W.43, directed P.W.1 to give a complaint to the Vigilance and Anti Corruption Unit. In that way, the complaint came to be lodged against the petitioners.

15. Further, in order to strengthen the case of the prosecution, the then Registrar of the Co-operative Societies was examined as P.W.44 and he has deposed that when he was working as a Registrar of Co-operative Societies, P.W.43 forwarded him an audit report for the year 1994-1995 and he only issued the office order to P.W.1 to prefer a complaint before the Superintendent of Police in the Vigilance and Anti Corruption Unit based on the audit report, after obtaining permission from the Chief Vigilance Officer and marked the office order as Ex.P.102.

16. P.W.46 is the then Sub Inspector of Police, Vigilance and Anti Corruption Unit. He has deposed that on 20.07.2000, he received a complaint from P.W.1, forwarded by the Superintendent of Police, Vigilance and Anti Corruption Unit. Based on the complaint, he registered a case in Crime No.6 of 2000 for the offences under Sections 408, 468, 477(A) read with 34 IPC and took up the case for investigation and subsequently, handed over the case file to P.W.47 for investigation.

17. Therefore, based on the evidence of the prosecution witnesses and also the audit report and further from the evidence of P.W.1, P.W.2 and P.W.3, the trial Court found the guilt of the petitioners and convicted them and the appellate Court also, while re-appreciating the entire evidence, found the guilt of the petitioners and confirmed the Judgment of conviction and sentence passed by the trial Court.

18. Though on the side of the accused/revision petitioners, two witnesses were examined, nothing was elicited against the case of the prosecution.

19. The evidence of P.W,1, P.W.2 and P.W.3 are very clear that during the relevant period, the petitioners were working as Manager and Clerk respectively and there was misappropriation and also there were falsification of records. They also conducted enquiry and the audit report also proved that the petitioners/A1 and A2 misappropriated the amount and they were having domain over the cash transaction of the bank. In the evidence, P.W.2 and P.W.3 have clearly stated that the repayment made by them were not credited in their accounts. But the petitioners have not given any proper explanation for the same.

20. Further, P.W.4 to P.W.42 are the members of the society and they have also stated that they borrowed loan from the complainant's bank and they have repaid the loan borrowed by them.

21. A perusal of the records shows that the amount repaid by P.W.4 to P.W.42 were not reflected in the relevant registers. Therefore, both the Courts below rightly appreciated the evidence and recorded the conviction and sentenced as stated above.

22. While exercising the revisional jurisdiction, the revisional Court cannot exercise the power of the appellate Court and re-visit the entire materials and re-appreciate the entire evidence like the final Court of fact finding namely the appellate Court. While exercising the revisional jurisdiction, the Court has to only see as to whether there is any perversity in the appreciation of evidence and illegality in the findings of the Courts below.

23. On a careful perusal of the entire materials, this Court does not find any perversity in the appreciation of evidence. Though the petitioners have stated

that during the relevant period, they were not working in the said bank as stated by the prosecution, the petitioners have not established the same contra to the evidence of P.W.1 to P.W.45. Under these circumstances, this Court does not find any merit in the revision and the revision is liable to the dismissed.

24.Accordingly, this Criminal Revision Case is dismissed.

08.02.2023

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1. The II Additional Sessions Judge, Puducherry

2. The Chief Judicial Magistrate, Puducherry

3. The Inspector of Police
   Vigilance & Anti-Corruption Unit
   Puducherry

4. The Public Prosecutor
   High Court, Madras

P.VELMURUGAN, J.

Ksa-2

Pre-Delivery Order in
Criminal Revision Case No.497 of 2020

08.02.2023