



Crl.R.C.No.1254 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.03.2023

Pronounced on : 23.03.2023

Coram:

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

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K.Aruljothi

.. Petitioner/appellant/Accused-1

/versus/

State represented by
The Inspector of Police,
CCIW (Rural), Coimbatore.
Crime No.18 of 2000

.. Respondent / Complainant

Prayer: Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C., to set aside the order passed by the learned IV Additional District and Sessions Judge, Coimbatore dated 23.06.2020 in Crl.A.No.11 of 2015, confirming the conviction and sentence imposed on the petitioner by the judgment of the learned Judicial Magistrate No.IV, Coimbatore in C.C.No.102 of 2001 of dated 23.12.2014 by allowing this revision.

For Petitioner : Mr.A.M.Rahamath Ali



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For Respondent : Mr.R.Kishore Kumar
Government Advocate (Crl.Side)

ORDER

The petitioner herein and one Venkatachalam were the Secretary and President respectively in the Thulukkamuthur Primary Agriculture Co-operative Bank. In the surprise check conducted by the Sub-Registrar of Cooperative Society on 30.05.2000, only Rs.6,420/- cash was available instead of Rs.19,53,774.30/- as mentioned in the Cash Register. On further inspection on 16.06.2000, shortage of fertilisers stock worth Rs 12,02,578.28/- was noticed. Hence Department enquiry under section 81 of the Cooperative Societies Act was conducted and misappropriation of Rs.31,49,932.58/- by the revision petitioner and the President was held to be proved. Therefore, the complaint dated 03.10.2000 was lodged by the Sub-Registrar of Co-operative Society, Coimbatore before the CCIW CID. Case in Crime No.18 of 2000 was registered under Sections 408, 409, 477A r/w. 109 IPC on 07.11.2000 against them and taken up for investigation by the Inspector of Police, Commercial Crime Investigation Wing (Rural), Coimbatore.

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2. On completion of investigation, Final Report was filed for offence under section 408 IPC as against the revision petitioner / Aruljothi (A-1) and Venkatachalam (A-2). The Judicial Magistrate No.IV, Coimbatore has taken cognizance of the offence in C.C.No.102 of 2001.

3. To prove the charge, 10 witnesses were examined on the side of the prosecution and 29 exhibits were marked in support of the prosecution case. In defence, one Manonmani was examined as D.W.1. No exhibits were marked as defence documents.

4. The Trial Court on appreciating the evidence held that A-2 as the President of the Society not guilty of misappropriation. There is no evidence against A-2 to indicate that he aided, abetted or conspired with A1 to commit the offence of misappropriation. Therefore acquitted from the charge under Section 408 I.P.C. Whereas, it held A1, who was in-charge of the stock and cash during the relevant point of time between 30.05.2000 to 16.06.2000 responsible for the shortage of cash and stock as found in the



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enquiry report conducted under Section 81 of the Cooperative Societies Act.

Observing that A1 further has admitted the misappropriation in the course of enquiry, therefore, A1 is liable to be punished for the criminal breach of trust. Accordingly, A1 was sentenced to undergo two years Rigorous Imprisonment and to pay a fine of Rs.3,000 in default to undergo two months Simple Imprisonment and the period of imprisonment already undergone was ordered to be set off.

5. Aggrieved by the conviction, the petitioner has preferred Appeal before the IV Additional District and Session Judge, Coimbatore and same was taken on file in Criminal Appeal No.11/2015. The Lower Appellate Court, after considering the grounds of appeal and re-appreciating the evidence, found no merit in the appeal and therefore dismissed it vide order dated 23.06.2020.

6. Criminal Revision Case is filed being aggrieved by the concurrent findings of the Courts below contending that the petitioner was only the



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Secretary of the Society, whereas the second accused as the President of the Society at the relevant point of time was responsible for the overall functioning of the Society. As far as the stocks of fertilisers, PW.8 as Treasurer of the Society also jointly responsible, whereas she was not prosecuted for shortage of cash and stock. Further it was contended that the Trial Court has acquitted A-2 from the charge. When A2, the President is overall responsible as per the bye-law of the Society found not guilty, the petitioner who is not responsible for the maintaining the cash cannot be held responsible for the alleged misappropriation. In the Department Enquiry, the president, who is overall responsible for the affairs of the Society, was found guilty and surcharge proceedings initiated against him and he also repaid the amount with interest. In the criminal prosecution, he was acquitted by the Trial Court. While so, the petitioner who as Secretary, working under the instruction of A2 cannot be made a scapegoat.

7. Further it is contended that, on the date of first inspection i.e., on 30.05.2000, the Account in the ledger was entered only up to 20.03.2000,



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but by the next inspection on 16.06.2000, entries were made in the account books up to 30.05.2000 without the knowledge of the petitioner and behind his back, which is prejudice to the interest of the petitioner. The manipulation has not been taken note by the Trial Court and the First Appellate Court. The prosecution witness PW-9 has deposed that the books were maintained accordingly and the petitioner has not signed on many days in the chitta and day book. PW-8 Rajeswari, Accountant is the person directly responsible for the sales and stock. She had not been prosecuted, the petitioner cannot in isolation be convicted, while the other staff jointly responsible for the stock and cash not prosecuted and the President, who is overall responsible for the affairs of the Society, found not guilty of offence.

8. Per contra the learned Government Advocate (Crl.Side) Mr. Kishore kumar submitted that, in this case, P.W.1 is the complainant/Deputy Registrar of the Co-operative Society and he received a complaint from P.W.9/ Sub-Registrar of the Co-operative Society, who conducted surprise check on 30.05.2020. During inspection, he found that there is a huge



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difference between amounts shown as cash-in-hand in the Register and the actual amount available. There was a shortage of Rs.19,47,374/-. Thereafter, P.W.1 ordered enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, to be conducted by P.W.9. Accordingly, the enquiry was conducted and the enquiry report is marked as Ex.P4. P.W.1 had lodged a complaint to the respondent along with enquiry report and the F.I.R came to be registered by P.W.10. He, who visited the scene of occurrence, prepared mahzaar and enquired the witnesses namely P.W.2, who is one of the Member of the Society, P.W.3 to P.W.6/the Executive committee Members, P.W.7/ Assistant Secretary and P.W.8/ Accountant of the Society, collected various documents, such as Resolution Book, statements of President of the Society, Assistant Secretary, Accountant. The petitioner had given a statement that he is the responsible for day to day affairs of the Society and also about the shortage of cash and fertilizers. The Daily Register, Stock Register, Cash Register and other documents were received and examined. The petitioner failed to participate in the enquiry, despite service of notice and Ex.P27 and P28 are the copies of the notice. During investigation, the



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petitioner involvement in forgery was revealed and the report submitted by P.W.9 has elaborated about the involvement of the petitioner. Further, during enquiry, the evidence collected and the statement recorded are in conformity to the enquiry report. All the witnesses and the documents were produced before the trial Court. The Trial Court, on considering the materials and evidence, acquitted the President finding that the petitioner is solely responsible for misappropriation and convicted the petitioner as stated above. The Lower Appellate Court considered the contention of the petitioner and for the specific contention, with regard to P.W.7, held no reason to interfere with the trial Court judgment, dismissed the appeal.

9. Heard both sides. Records perused.

10. The investigation by the police in this case, criminal law was set in motion on the complaint dated 03.10.2000 [Ex.P3] given by PW.1 Mr.Natchimuthu, the Regional Deputy Registrar of Co-operative Society. The complaint indicates that enquiry under Section 81 of the Co-operative



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Societies Act was conducted against the Secretary (petitioner herein) and the President (the acquitted accused). The enquiry report reveals that, they both had misappropriated Rs.31,49,938.58. Enclosing the enquiry report [Ex.P4], the complaint has been given to the Superintendent of Police, CCIW CID. Based on the complaint and the enclosed enquiry report, FIR [Ex.P29] was registered in Crime No.18 of 2000.

11. In the trial, PW-9, who conducted surprise check on 30.05.2000 had deposed that, during the surprise check, in the cash register marked as Ex.P10, he found the cash balance as on 30.05.2000, shown as Rs.19,53,774.30, but A1 (the petitioner herein) had cash in hand only Rs.6,420/-. Therefore, he prepared a Special Report [Ex.P1] and forwarded to the Deputy Registrar.

12. The petitioner's counsel states that on that day, in the cash register [Ex.P10], entries were made only upto 20.03.2000 and further entries were made behind his back. This argument does not anyway aid the petitioner.



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Since, the document namely the Account Book was recovered on the date of inspection itself. Further to substantiate this allegation, the accused has not placed any evidence to disprove the entries made in the account book. Ex.P8 is the handing and taking over letter dated 15.05.1999, in which, the petitioner has put his signature indicating that he has taken over the charge of the stock, when PW-8 / Rajeswari, Accountant went on medical leave. As Secretary of the Society, the petitioner herein has received the charge and stock mentioned in Ex.P8 and signed in it. While the records signed by him proves that he has taken charge of the stock on 15.05.1999 and till 16.06.2000 he was holding the charge of the stock and did not hand over the stock to Rajeswari even after her return from medical leave. These facts against the petitioner is well proved by the prosecution from the endorsements made by the petitioner through in Ex.P8 and Ex.P26. In the stock register [Ex.P26] the petitioner, Arul Jothi, as Secretary written 'handed over' on 16.06.2000 and signed. The second accused Venkatachalam, as President written 'Taken over.' and signed. Besides Rajeswari (PW.8) had deposed that she after handing over charge of the



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stock to A1 on 15.05.1999 under Ex.P8, she went on medical leave. After her joining duty, A1 did not hand over the charge and stock back to her. Her statement dated 16.06.2000 given to the Sub-Registrar during the second check is marked as Ex.P15.

13. Regarding the role of the President, who was tried as A.2, though the prosecution witnesses had deposed that, he is also liable for the misappropriation of cash and stock, the Trial Court has acquitted him by observing, A.2 was neglected by making initial in the entries made by the A.1 in the Day Book, but not guilty of the offence punishable under Section 408 IPC, since no entrustment to him proved. To arrive at this conclusion, the learned Trial Court has referred the endorsement made by A.2 in the report dated 16.06.2000 sponsoring to take action against A.1 and the resolution passed by the Board to take action against A1 for shortage of cash and stock. These two documents are on the date of second inspection.

14. A.2 being the the elected President, the Board immediately on assuming office as President, had passed a resolution that the Secretary and



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the President of the Society will be jointly and severely liable for the properties, stock and cash. This *prima facie* proof for the joint liability/responsibility of the President and the Secretary. Though incriminating material was available even against the President, the Trial Court has acquitted him for the reasons stated above. Even assuming it is an erroneous acquittal of one accused cannot be a sufficient ground to acquit the other accused. When there is clinching evidence against this petitioner, for not keeping fertilizer stock property as per the stock register and the physical shortage of stock directly attributable to him criminal breach of trust in respect of cash and stock entrusted to him as per Ex.P8 and Ex.P26. The guilt of committing breach of trust being well explained in [Ex.P4]. The stock register and the endorsements made by the petitioner in Ex.P8 and Ex.P26 and his own admission during Section 81 enquiry stands unimpeached.

15. The learned counsel for the revision petitioner submitted that, the petitioner is 67 years old and suffering from serious medical history. The



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loss alleged to have been caused, has been recovered from the President substantially. Therefore, sought for leniency in sentencing.

16. The Learned Government Advocate on verification submitted that, the President, who was acquitted, has paid the amount for which, he was found responsible jointly along with this petitioner in Section 81 Enquiry Report. As far as this petitioner is concerned, in addition to the joint liability along with the President, he is individually found liable to pay surcharge of Rs.4,78,040/- which he has not paid till date.

17. Taking into consideration the above submission made by the learned counsel for the revision petitioner and the response by the learned Government Advocate, this court is of the opinion that, while confirming the conviction, the period of sentence alone be modified to One Year R.I., with fine of Rs 3000/- in default, 3 months S.I.



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18. With the above modification, this Criminal Revision Case is partly allowed. The Trial Court is instructed to take steps to secure the accused/petitioner and commit him to prison to undergo the balance period of sentence.

23.03.2023

Index:yes/no
speaking order/non speaking order
rpl

To :

- 1.The IV Additional District and Sessions Judge, Coimbatore.
- 2.The Judicial Magistrate No.IV, Coimbatore.
- 3.The Inspector of Police,
CCIW (Rural), Coimbatore.
- 4.The Public Prosecutor,
High Court of Madras,
Chennai.



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DR.G.JAYACHANDRAN,J.

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Pre-Delivery Order made in
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