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Crl.M.P.No.15673 of 2023 in Crl.R.C.No.1658 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2023

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.15673 of 2023 in
Crl.R.C.No.1658 of 2023

V.M.Shanmuganathan,
S/o.Late.Meenatchisundaram Pillai

... Petitioner

Vs.

Inspector of Police,
Economic Offences Wing Namakkal,
Crime No.2/2001.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 397(1) r/w 482 of the Code of Criminal Procedure, to suspend the Sentence of 1 Year Rigorous Imprisonment imposed upon the petitioner by the Learned Judicial Magistrate No.2, Namakkal by judgment dated 09-07-2010 in C.C.No.14 of 2004, which was also confirmed by the Learned 1st Additional Sessions Court, Namakkal by judgment dated 28-06-2023 in C.A.No.77 of 2010.

For Petitioner : Mr.R.T.S.Kannan
For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

The petitioner/A1 in C.C.No.14 of 2004 was convicted by the learned Judicial Magistrate No.II, Namakkal along with three others for offence under Sections 120(b), 409 & 477-A of IPC and sentenced to undergo one year Rigorous Imprisonment each and to pay a fine of Rs.1,000/- for each offence



in total Rs.3,000/-, in default to undergo three months Simple Imprisonment.

As against the judgment of the trial Court, dated 09.07.2010, the petitioner/A1 preferred an appeal before the learned I Additional District Sessions Judge, Namakkal (lower appellate Court) in C.A.No.77 of 2010. The lower appellate Court, by judgment, dated 28.06.2023 dismissed the appeal confirming the conviction and sentence of the trial Court by a common judgment. Aggrieved over the same, the present criminal revision case filed.

2.The prosecution case in brief is that during the period from April 1999 to June 1999, in violation of agreement, dated 29.04.1999 with TRIFED & LAMP Cooperative Society, all the four accused conspired in procurement of pepper from tribal people instead of procuring pepper from individuals residing in plains. To cover up the same, they created forged receipts as though 10 metric tonnes of pepper purchased from Kolli Hills tribal people. A2 who was entrusted with cash of Rs.17,29,800/- purchased 9,300 grams of pepper from one Sathasivam of Karuppur village, for which the amount of Rs.13 lakhs paid through cheque of the Society Account and thereby, the Society was cheated and misappropriated to the extent of Rs.4,29,800/-. To cover up the same, by creating forged receipts, the price of the pepper has



been shown as though Rs.186/- for 1 kg and attempted to reconcile the account. Hence, the respondent Police registered a case for offence under Sections 120(b), 408, 409, 467, 471 and 477-A r/w 34 of IPC.

3.During trial, PW1 to PW24 examined and Exs.P1 to P112 marked. On the side of the defence, DW1 examined and Exs.D1 to D3 marked. On conclusion of trial, the trial Court convicted the petitioner as stated above.

4.The contention of the petitioner is that the petitioner was not shown as accused in the complaint initially lodged by PW2 on 03.01.2001 on the basis of enquiry report under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983. Thereafter, the second complaint including the name of the petitioner was given on 06.02.2002. In the 81 enquiry report, there is nothing against the petitioner which forms the basis of the case in misappropriation and defalcation of the society funds and accounts. The specific case of the Department is that the petitioner not committed any misappropriation or defalcation of accounts and thereby, benefited out of the same. In such case, the petitioner ought not to have been arrayed as accused. Though 24 witnesses examined in this case, none of the witnesses stated anything against



the petitioner except for two or three witnesses who stated that the petitioner was present. Apart from it, there is nothing more against the petitioner. This fact has not been considered by the trial Court and the lower appellate Court. He further submitted that as far as the surcharge proceedings under Section 88 of the Tamil Nadu Cooperative Societies Act, 1983 is concerned, A3 and A4 in the year 2019 paid the amount to the Society, which is acknowledged and the lower appellate Court in its judgment at paragraph No.38 recorded the same that Rs.4,29,800/- has been paid by A2, A4 and son of A3. Thus, there is no loss to the Society. Further submitted that the petitioner is not entrusted with any amount of the Society, hence, the question of petitioner committing offence under Section 409 IPC would not arise. The condition is that first there should be an entrustment of property which ought to have been misappropriated. In this case, admittedly, there is no entrustment with the petitioner. Likewise, for offence under Section 477-A IPC Falsification of Records, the petitioner not dealt with any of the records of the Society which is not in dispute.

5.He further submitted that the petitioner is aged about 72 years with health ailments and he is in the evening of his life. The criminal revision



against the other accused have been admitted and they were granted Suspension of Sentence. Hence, he prayed for exemption from surrender and suspension of sentence in the above case.

6.*Per contra*, the learned Additional Public Prosecutor appearing for the respondent Police submitted that in this case, 24 witnesses examined and several documents marked during trial. PW1 is the Regional Registrar of Cooperative Society, Namakkal Region who nominated PW2 to conduct enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, 1939. PW2 conducted enquiry, submitted his report (Ex.P9) and lodged a complaint with the respondent Police (Exs.P10 & P11). PW3 to PW8 are the Members of the Lamp Cooperative Society who stated that they have not supplied any pepper to the Society as found in the Society records. They stated that it was the other accused who asked them to sign in vouchers and bills. PW9, son of Sathasivam stated that they got 16 acres of land in Kolli Hills and in the their estate, around 10 metric tonnes of yield of pepper was collected and the same was transported to their godown at Karuppur village after getting permission from the Village Administrative Officer. The petitioner along with A2 is said to have negotiated the price with him. Further, PW9 categorically stated that



he only supplied pepper from Karuppur since he already transported the same from Kolli Hills. He also confirmed about the supply of pepper and receipt of Rs.13 lakhs by way of cheque from the Society.

7.PW10 and PW11 are the Drivers of the Society vehicle who stated about the transportation of pepper from the godown of Sathasivam. PW12 is the Manager of the Bank confirms about the transaction. PW13 is the Accountant of the Society who stated about the payments made. PW14 is the Member of the Lamp Cooperative Society. PW15 is the Accountant of the Society who stated about the recording of the vouchers and bills. PW16 is the Secretary and PW17 are the Accountant of the Lamp Cooperative Society. PW18 and PW19 employed in the Tribal Welfare Board in Chennai, who stated about the payment made to the Society for procurement of pepper from the tribal people. PW20 is the Forest Ranger, who stated about the forest check post and the recordings of the vehicles passing through the check post. PW21 is the Assistant Manager of TRIFED Regional Office, Chennai, who corroborates the evidence of PW19. PW22 is the Deputy Registrar of Cooperative Department. PW23 & PW24 are the Inspectors of Police, CCIW, Namakkal who stated about the investigation conducted, examination of



witnesses, collection of materials and documents and production of same before the trial Court. He further submitted that the accused examined one witness as DW1 who is the Writer of Kolli Hills Society. He stated about Jagathambal, wife of Sathasivam availing loan from the Society and also the Sathasivam holding land in Kolli Hills. Through DW1 relevant documents (Exs.D1 to D3) marked. As regards this petitioner, he was the Managing Director of the Society and overall incharge. In connivance with the other accused committed the offence of misappropriation and cheating. The trial Court as well as the lower appellate Court on the evidence of witnesses and documents produced rightly convicted the accused. Hence, opposed this petition.

8.Considering the rival submissions and on perusal of the materials, the crux of the case is that the pepper was purchased not in Kolli Hills which is the condition given in the agreement, but purchased the same in the plains at Karuppur village. It is seen that some incentives given by the Apex Society was misappropriated by the petitioner in connivance with the other accused. It is to be seen that PW9, son of Sathasivam admits that he supplied 10 metric tonnes of pepper to the Society which was collected from Kolli Hills where



they got an estate of 16 acres. It is also seen that this yield of pepper collected from Kolli Hills and transported to Karuppur godown could be seen from the evidence of Village Administrative Officer which is also confirmed by the Forest Ranger. The offence is said to have been committed since the procurement of pepper was in the plains not in Kolli Hills. The other overtact seems to be subsidy or incentive given has been misappropriated. Now, the amount of Rs.4,80,000/- has been repaid by A3 and A4, which has been recorded in the lower appellate Court judgment and the acceptance receipt given by the Kolli Hills Society is produced along with the typed set. Thus, no loss sustained by the society, the amount which was wrongly booked was repaid and the mistake committed is only place of procurement.

9.Considering that the sentence of the other accused suspended and the petitioner's name does not find place in the complaint and no surcharge proceedings against him and the petitioner is aged more than 70 years, who is with age ailments, this Court is inclined to suspend the substantive sentence of imprisonment alone till the disposal of the revision.

10.Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the revision and the petitioner is



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ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) with two sureties, each for a like sum to the satisfaction of the learned Judicial Magistrate Court No.II, Namakkal.

11.Further, the petitioner is directed to appear before the trial Court on the first working day of every English Calendar month at 10.30 a.m., until further orders and if he is not able to appear before the trial Court on any day, he shall make arrangement to file an application under Section 317 Cr.P.C., and shall appear before the trial Court on any other day in lieu of the date of his absence, as directed by the trial Court.

12.Accordingly, this Criminal Miscellaneous Petition is ordered.

17.10.2023

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Index: Yes/No
Internet: Yes/No

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To

1.The I Additional Sessions Court,
Namakkal.



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M.NIRMAL KUMAR, J.

vv2

2.The Judicial Magistrate No.II,
Namakkal.

3.The Inspector of Police,
Economic Offences Wing,
Namakkal,

4.The Public Prosecutor,
High Court, Madras.

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