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Crl.M.P.No.14381 of 2023 in
Crl.R.C.No.1566 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2023

CORAM:

THE HON'BLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.M.P.No.14381 of 2023 in
Crl.R.C.No.1566 of 2023

Jaganathan

... Petitioner

Vs.

The State Rep. by Inspector of Police,
(Commercial Crime Investigation Wing),
Namakkal
(Crime No.3 of 2009)

... Respondent

PRAYER: Criminal Revision filed under Section 397 r/w 401 of Cr.P.C to suspend the sentence imposed on the petitioner by the Judgment dated 31.07.2023 made in Criminal Appeal No.96 of 2021 on the file of the learned I Additional District Judge, Namakkal, confirming the judgment and order dated 13.09.2021 made in C.C.No.604 of 2020 on the file of Judicial Magistrate No.II, Namakkal and to release the petitioner on bail pending disposal of the above Criminal revision.

For Petitioner : Mr.N.A.Ravindran

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor



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ORDER

The petitioner/A2 in C.C.No.604 of 2020 was convicted and sentenced to undergo three months S.I. and to pay a fine of Rs.500/-, in default to undergo one month S.I. for the offence under section 120(b), to undergo one year S.I. and to pay a fine of Rs.1,000/- in default to undergo one month S.I. for the offence under section 408; to undergo one year S.I. and to pay a fine of Rs.1,000/- in default to undergo one month S.I. for the offence under section 467; to undergo one year S.I. and to pay a fine of Rs.1,000/- in default to undergo one month S.I. for the offence under section 471; and to undergo one year S.I. and to pay a fine of Rs.1,000/- in default to undergo one month S.I. for the offence under section 477-A. Against the said conviction, the petitioner preferred this revision and suspension of sentence.

2. The case of the prosecution is that the case has been registered for the offence under section 408, 467, 471, 477(A) r/w 120(b) on the



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complaint of the Deputy Registrar, Cooperative Societies, Namakkal dated 15.09.2009. In this case, A1/Visawanathan is the Secretary, A2/Jaganathan is the Co-operative Sub-Registrar (CSR)/Special Officer, A3/Elango is the Assistant of Rasipuram Town Co-operative Housing Society, Namakkal and A4/Velayutham is the Assistant Secretary of the society who is no more and hence, charges against him got abated. The case of the prosecution is that all the accused were misappropriated a sum of Rs.2,40,000/- by falsification of Society accounts and using forged documents as genuine documents between 01.04.2003 and 31.03.2004. Housing loans of two persons namely PW4/Rajagopal and PW5/Papathiyammal have been misappropriated. PW3 is the accountant of the Society through whose account the amount had been routed through. A1 being the Secretary and signing authority of the society, who is overall in-charge of the society, conspired with others, created forged documents and misappropriated the society funds. In this case, the accused have falsified the accounts of the society by showing that a sum Rs.1,83,600/- was disbursed to Papathiyammal on 31.03.2004 by fabricating the signature of Papathiyammal in the disbursement register. Likewise, they falsified the accounts of the society by showing as if a sum of Rs.2,00,000/-



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was given to Rajagopal/PW4 as housing loan through three cheques.

However, PW4 had received only a sum of Rs.1,23,600/- by way of two cheques and the other cheque for a sum of Rs.56,900/- has been misappropriated by them. During investigation, witnesses have been examined, documents collected and PW1 is the complainant/Deputy Registrar, Co-operative Societies. On receipt of the complaint, FIR registered. 81 enquiry report also submitted. 81 enquiry report is a detailed one given all details of the Society and the misappropriation committed by the accused. The auditor who conducted the audit has been examined as PW2. PW4 and PW5 had clearly stated that the housing loans discharged to them had been diverted and misappropriated. Before the lower court, PW1 to PW13 examined, Ex.P1 to Ex.25 marked. On the side of the defence, no witness examined and no document marked. On conclusion of the trial, the trial court convicted the petitioner as stated above. The lower appellate court also confirmed the conviction and sentence passed by the trial court by dismissing the appeal in Crl.A.No.96 of 2021. Against which the present revision and suspension of sentence.



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3. The primary contention of the petitioner is that the petitioner is the Cooperative Sub-Registrar who is also appointed as Special Officer. In this case, A1, A3 and A4 who were the Secretary, Assistant of Rasipuram Town Co-operative Housing Society, Namakkal and Assistant Secretary of the society who were looking after the functioning of the day to day affairs of the society. As regards this petitioner, he is only an secondary signatory to the cheques of the society and A1 is the primary signatory. The enquiry officer had considered these aspects and given a report against him. The respondent police had also not conducted any independent investigation to fix any responsibility. PW4 and PW5 have clearly stated that the funds have been routed only through the account of A3, and the petitioner has nothing to do with it. He further submitted that this Court had granted suspension of sentence to A3 in Crl.M.P.No.13434 of 2023 in Crl.R.C.No.1504 of 2023 vide order dated 30.08.2023.

4. Learned Additional Public Prosecutor filed his counter and submitted that when PW5 Pappathiammal approached the accused for a loan for Rs.2,00,000/-, the petitioner and other accused conspired together and



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obtained her signature in the loan paper, and using the said document, falsified the accounts of the society by showing that Rs.1,83,600/- was disbursed to PW5 in the disbursement register and transferred the entire sum of Rs.1,83,600/- to the account of A3/Elango and misappropriated the amount. Likewise, when PW4/Rajagopal approached the accused for a loan of Rs.2,00,000/-, the petitioner and the other accused misappropriated a sum of Rs.56,900/- by falsifying the accounts of the society. The respondent police conducted the investigation in fair and impartial manner in accordance with law. All the mandatory provisions have been complied with by the police during the course of investigation. After completion of investigation, the respondent police filed final report before the concerned court of law. In order to prove the offence, the investigating officer examined 13 witnesses and collected all material evidence. After completion of investigation, the sub inspector of police, CCIW-CID, Namakkal filed a final report. Before the trial court, PW1 to PW13 examined and Ex.P1 to Ex.P25 marked. On conclusion of the trial, the trial court had rightly convicted the accused and the lower appellate court also independently look into the matter and rightly confirmed conviction of the



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trial court. Learned Additional Public Prosecutor fairly submits that A3 in this case had granted suspension of sentence vide order of this Court dated 30.08.2023 in Crl.M.P.No.13434 of 2023 in Crl.R.C.No.1504 of 2023.

5. Considering the submissions on either side and perusal of the materials, it is seen that PW4 and PW5 have approached the accused for the housing loans and the amounts which are allegedly misappropriated had been routed through the account of A3. The petitioner is a co-signatory along with A1. Now A1 has been secured and he is in confinement. The responsibility fixed by the Deputy Registrar Co-operative Society and the Sur-charge officer, on the petitioner is Rs.1,83,600/- and this liability starts from 01.04.2004 at the rate of 18% per annum.

6. Learned counsel for the petitioner submits that this sur-charge is fixed on both A1 as well as the petitioner. Further the petitioner has got remedy to file an appeal by way of CMA before the sessions court. In any event without prejudice to the petitioner in CMA, to show his bonafide, he is willing to pay a sum of Rs.2,00,000/-.



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7. Accordingly this Court directs the petitioner to pay a sum of Rs.2,00,000/- to the credit of Rasipuram Taluk Cooperative Housing Society within a period of two weeks from the date of receipt of a copy of this order.

8. In view of the same, this Court is inclined to grant suspension of sentence.

9. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the revision case and the petitioner is 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 II, Namakkal. While executing the bond, the petitioner shall produce the proof of payment of Rs.2,00,000/- to the credit of Rasipuram Taluk Cooperative Housing Society.

10. Further, the petitioner shall appear before the Trial Court on the first working day of every three months at 10.30 a.m. until the disposal of



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the revision case and if he is not able to appear before the Trial Court on that day, he shall make arrangements 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.

11. Accordingly, Crl.M.P.No.14381 of 2023 is ordered.

01.12.2023

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To

- 1.The State Rep. by Inspector of Police,
(Commercial Crime Investigation Wing),
Namakkal
- 2.The I Additional District Judge, Namakkal
- 3.The Judicial Magistrate No.II, Namakkal
- 4.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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