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Crl.R.C.No.501 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2023

CORAM:

THE HONOURABLE MS JUSTICE R.N.MANJULA

Crl.R.C.No.501 of 2017

K.P.Jaganathan

... Petitioner

Vs.

The State Rep. By
The Inspector of Police,
CCIWCID,
Tiruvallur.
(Crime No.1/2008)

... Respondent

Prayer: The Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C. to set aside the Judgment passed in C.C.No.396 of 2008 dated 15.04.2016 on the file of the Judicial Magistrate, Tirutani modified in C.A.No.38 of 2016 dated 31.01.2017 on the file of the District Principal Sessions Court, Tiruvallur.

For Petitioner : Mr.K.Goviganesan

For Respondent : Mr.R.Murthi,
Government Advocate (Crl. Side)

ORDER

This Criminal Revision has been preferred challenging the order passed in C.C.No.396 of 2008 dated 15.04.2016 on the file of the Judicial Magistrate, Tirutani modified in C.A.No.38 of 2016 dated 31.01.2017 on the file of the District Principal Sessions Court, Tiruvallur.



2. The petitioner is the sole accused. He was the former President of

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KH.260, Mathur Dr.Puratchi Thalaivi Power Loom Weavers Co-operative Production and Sales Sangam and his period got expired on 25.05.2001 and subsequently he handed over the charges of the society to the Special Officer on 23.09.2001. At that time, it was found that there was a shortage of stock to the tune of Rs.2,59,650/-, shortage of yarn to the tune of Rs.45,776/- and other articles to the tune of Rs.1,390/- making altogether a sum of Rs.3,06,816/-. The Special Officer lodged a complaint before the respondent Police by alleging that there is some misappropriation and on the basis of which a case has been registered in Crime No.1 of 2008 for the offence under Section 406 I.P.C., After completion of investigation, charge sheet was filed against the accused and the same was taken on file in C.C.No.396 of 2008 before the learned Judicial Magistrate, Tiruttani. After completion of trial, the accused was found guilty for the offence under Section 406 I.P.C., and convicted and sentenced him to undergo 2 years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default to undergo 3 months Simple Imprisonment. Aggrieved over the same, the accused preferred an appeal in C.A.No.38 of 2016 before the Principal District and



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Sessions Court, Tiruvallur. After contest, on 31.01.2017, the learned Appellate Judge modified the punishment only in respect of the period of sentence from 2 years to 1 year Rigorous Imprisonment and all other punishment remained unaltered. Challenging the said conviction and sentence passed by the learned Appellate Judge, the accused has preferred the present Revision before this Court.

3. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondent.

4. The learned counsel for the petitioner submitted that the petitioner is now 80 years old and he has severe health ailments. The case has been registered against the petitioner due to some political motive in view of his active participation in one of the political parties. Only under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, enquiry was initiated and the report was also submitted and no surcharge proceedings have been initiated under Section 87 of the Tamil Nadu Co-operative Societies Act. However, in order to erase the stigma of conviction against the petitioner, the



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petitioner's son is willing to pay the amount of Rs.3,06,816/- . However the said payment cannot be made because the society had become defunct and now the administration has taken up by the Assistant Director of Handlooms, Tiruvallur.

5. If the surcharge proceedings had been initiated, both the principal and interest and in case of any default, the property would be attached. Since no proceedings under Section 87 of the said Act has been initiated by virtue of the order of this Court, dated 05.01.2023, the petitioner was directed to deposit a sum of Rs.5 lakhs to the Assistant Director of Handlooms, Tiruvallur and the Assistant Director, Handloom was also directed to receive the same and apportionate the said sum accordingly. For that, the petitioner was directed to produce the necessary receipt of the said payment before the Court today i.e., 31.01.2023.

6. When the matter was taken up today, the learned counsel for the petitioner filed a memo along with the copy of the demand draft vide BC.No.50328839, dated 27.01.2023 drawn from the Union Bank of India,



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Maddur Branch in favour of the Assistant Director, Handlooms, Tiruvallur
for a sum of Rs.5 lakhs.

7. Mrs.D.Chitra Devi, Handloom Inspector, Tiruvallur who is present before this Court today, has also acknowledged the payment of Rs.5 lakhs made through the demand draft. Since the direction of this Court has been complied with and the petitioner is a super senior citizen, taking into consideration of the special circumstance of this Case and also taking into consideration of the fact that the petitioner has come forward to pay the compensation of Rs.5 lakhs irrespective of the merits of the revision, I feel it is unnecessary to confirm the sentence of one year Rigorous Imprisonment already imposed. Section 406 I.P.C contemplates a punishment extending to 3 years Simple Imprisonment or with fine or with both, I feel the discretion of this Court can be exercised to set aside the sentence alone. It is also to be noted that the fine amount of Rs.5,000/- has been already paid as the punishment for the offence has been proved against the petitioner.

8. In view of the above stated reasons, the sentence of one year



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Rigorous Imprisonment imposed by the learned Principal District and Sessions Judge, Tiruvallur in C.A.No.38 fo 2016, dated 31.01.2017 is set aside and other conditions remain unaltered.

9. With the above modification, this Criminal Original Petition stands allowed.

31.01.2023

Index: Yes/No
Speaking order/Non speaking order
vum

To

1. The Inspector of Police,
CCIWCID,
Tiruvallur.
- 2.The Section Officer,
Criminal Section,
High Court, Madras.

R.N.MANJULA,J.



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