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Crl.M.P.No.16835 of 2023 in Crl.R.C.No.1772 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.16835 of 2023
in Crl.R.C.No.1772 of 2023

Pandurangan

... Petitioner

Vs.

State rep. by,
The Inspector of Police,
CCIW-CID, Perambalur P.S.,
(Cr.No.7/2009).

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 401 of Cr.P.C., to suspend the sentence imposed on the petitioner in C.C.No.258 of 2017 on the file of the Judicial Magistrate Court No.I, Perambalur, dated 28.04.2022, as confirmed in Crl.A.No.4 of 2022 on the file of the Principal District and Sessions Court, Perambalur dated 12.09.2023, pending disposal of the above Criminal Revision and enlarge the petitioner on bail.

For Petitioner	:	Mr.A.E.Ravichandran
For Respondent	:	Mr.A.Damodaran, Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner in C.C.No.258 of 2017 by the learned Judicial Magistrate No.I, Perambalur on 28.04.2022 as confirmed in



Crl.A.No.4 of 2022 by the learned Principal District and Sessions Judge, Perambalur on 12.09.2023, till the disposal of the main Criminal Revision Case and enlarge the petitioner on bail.

2.The petitioner is A2 in C.C.No.258 of 2017. The conviction and sentence imposed on the petitioner/A2 and A1 & A3 are as follows:

- For offence under Section 408 of IPC, the accused 1 to 3 sentenced to undergo Simple Imprisonment for the period of one year and shall pay a fine of Rs.1,000/- each, in default to undergo one Imprisonment.
- For offence under Section 477A of IPC, the accused 1 & 2 are sentenced to undergo Simple Imprisonment.

3.Aggrieved over the same, the petitioner preferred an appeal before the learned Principal District and Sessions Judge, Perambalur (lower appellate Court) in Crl.A.No.4 of 2022. The lower appellate Court, by judgment, dated 12.09.2023 dismissed the appeal confirming the judgment of the Trial Court. Challenging the same, the petitioner/A2 filed the present Criminal Revision Case.



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4.The contention of the petitioner is that the petitioner, Cashier/Clerk along with two others A1, Accountant/Stock Manager and A3, Special Officer were tried by the learned Judicial Magistrate No.I, Perambalur (Trial Court) for offence under Sections 467, 468, 418, 408, 409, 201, 204 r/w 34, 109 of IPC. The primary allegation is that Perambalur Agricultural Cooperative Marketing Society purchased agricultural products from farmers and issued bill to them and the same products were sold to three persons viz., Aasaithambi, Proprietor of M/s.Muthulakshmi Traders for Rs.29,544.25/-, Aasaithambi, Proprietor of M/s.Ganesh Traders for Rs.34,171.00/- and T.T.Mannan, Proprietor of M/s.Om Shakthi Traders for Rs.19,171.45/- in total Rs.82,885.70/-. The said amount of Rs.82,885.70/- was received by the accused from the above named purchasers but failed to credit the same in the account of the society. On the other hand, all the accused in collusion with each other with an intention to commit misappropriation, issued false sale receipts, made false entries in Cash Book and projected the same as genuine documents destroying the original stock register to scree their offence. A3, Special Officer knowing all these entries approved and authorized the sell and receipt by misusing his power.



5. During trial, on the side of the prosecution, seven witnesses examined as PW1 to PW7 and forty eight documents marked as Exs.P1 to P48. On the side of the defence, no witness examined and no document marked. The Trial Court on the evidence and materials convicted the petitioner along with A1 and A3 as stated above.

6. The learned counsel for the petitioner submitted that the petitioner is liable to collect a sum of Rs.19,170.45/- from M/s.Om Sakthi Traders. PW5, Proprietor of M/s.Om Sakthi Traders stated that he deposited the said amount to the account of the society but the same has not properly accounted and shown as outstanding. Further, PW5 confirmed the same by marking Ex.P39. He further submitted that the amount of Rs.19,170.45/- has been paid well before registration of FIR, dated 14.07.2009 and the amount had been deposited to the society with interest of Rs.27,413.45/- and receipt No.0981 was issued on 12.03.2008. Thus, the FIR was registered after one year three months. In all fairness, the respondent Police could have dropped the petitioner from the case but for obvious reasons, he had been arrayed as accused. He further submitted that this fact has been



recorded by the lower appellate Court in its judgment in paragraph No.8.

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7.The learned counsel for the petitioner further submitted that since identical witnesses were to be cross examined, the petitioner filed cross examination petitioner and the same was allowed by the Trial Court. In the meanwhile, PW5 passed away, hence, he could not be subjected to the cross examination. In the view of the same, the trial Court relied upon the evidence of PW5 and convicted the petitioner is not proper.

8.The learned Additional Public Prosecutor appearing for the respondent Police on the other hand opposed the suspension of sentence submitting that the petitioner along with two others had misappropriated the society amount to the tune of Rs.82,885.70/-. He fairly submitted that as regards this petitioner is concerned, the amount is only Rs.19,170.45/-. The petitioner was liable and in-charge to collect the said amount from M/s.Om Sakthi Traders. Though he had collected the same, but not credited to the society account which is confirmed by PW5, the Proprietor of M/s.Om Sakthi Traders. Hence, the petitioner in collusion with other accused



committed misappropriation which has been rightly confirmed by the Courts below.

9.Finding reasons and arguable points, this Court is inclined to suspend the sentence of the petitioner till the disposal of the criminal revision case.

10.Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the criminal 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 trial Court.

11.Further, the petitioner shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m. until the disposal of the criminal 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



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Court on any other day in lieu of the date of his absence as directed by the

Trial Court. Accordingly, this Miscellaneous Petition is ordered.

05.12.2023

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To

- 1.The Principal District and Sessions Court,
Perambalur.
- 2.The Judicial Magistrate Court No.I,
Perambalur.
- 2.The Inspector of Police,
CCIW-CID, Perambalur Police Station.
- 3.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR., J.

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