



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 03/01/2023

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CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.RC(MD)Nos.693, 695, 696, 697 and 698 of 2021

(1)Crl.RC(MD)No.693 of 2021:-

M.Rasiah : Petitioner/Appellant/
Sole Accused

Vs.

The State through
The Inspector of Police,
Commercial Cases Investigation Wing,
Tirunelveli.

(Crime No.02 of 2013) : Respondent/Respondent/
Complainant

Prayer: Criminal Revision is filed under Sections 397 and 401 of the Criminal Procedure Code, to call for the records and set aside the order passed in Criminal Appeal No.38 of 2020, dated 24/08/2021 on the file of the IV Additional District Court, Tirunelveli, confirming the orders passed in CC No.9 of 2014 on the file of the Judicial Magistrate Court No.2 (CCIW-Special Court), Tirunelveli, dated 31/07/2020.

(2)Crl.RC(MD)No.695 of 2021:-

M.Rasiah : Petitioner/Appellant/
Sole Accused

Vs.



The State through
The Inspector of Police,
Commercial Cases Investigation Wing,
Tirunelveli.

(Crime No.02 of 2013)

: Respondent/Respondent/
Complainant

Prayer: Criminal Revision is filed under Sections 397 and 401 of the Criminal Procedure Code, to call for the records and set aside the order passed in Criminal Appeal No.37 of 2020, dated 24/08/2021 on the file of the IV Additional District Court, Tirunelveli, confirming the orders passed in CC No.6 of 2014 on the file of the Judicial Magistrate Court No.2 (CCIW-Special Court), Tirunelveli, dated 31/07/2020.

(3) Cr1.RC (MD) No. 696 of 2021 :-

M.Rasiah

: Petitioner/Appellant/
Sole Accused

Vs.

The State through
The Inspector of Police,
Commercial Cases Investigation Wing,
Tirunelveli.

(Crime No.02 of 2013)

: Respondent/Respondent/
Complainant

Prayer: Criminal Revision is filed under Sections 397 and 401 of the Criminal Procedure Code, to call for the records and set aside the order passed in Criminal Appeal No.39 of 2020, dated 24/08/2021 on the file of the IV Additional District Court, Tirunelveli, confirming the orders passed in CC No.10 of 2014 on the file of the Judicial Magistrate Court No.2 (CCIW-Special Court), Tirunelveli, dated 31/07/2020.



(4) Cr1.RC (MD) No. 697 of 2021 :-

M.Rasiah

: Petitioner/Appellant/
Sole Accused

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Vs.

The State through
The Inspector of Police,
Commercial Cases Investigation Wing,
Tirunelveli.

(Crime No.02 of 2013)

: Respondent/Respondent/
Complainant

Prayer: Criminal Revision is filed under Sections 397 and 401 of the Criminal Procedure Code, to call for the records and set aside the order passed in Criminal Appeal No.40 of 2020, dated 24/08/2021 on the file of the IV Additional District Court, Tirunelveli, confirming the orders passed in CC No.7 of 2014 on the file of the Judicial Magistrate Court No.2 (CCIW-Special Court), Tirunelveli, dated 31/07/2020.

(5) Cr1.RC (MD) No. 698 of 2021 :-

M.Rasiah

: Petitioner/Appellant/
Sole Accused

Vs.

The State through
The Inspector of Police,
Commercial Cases Investigation Wing,
Tirunelveli.

(Crime No.02 of 2013)

: Respondent/Respondent/
Complainant

Prayer: Criminal Revision is filed under Sections 397 and 401 of the Criminal Procedure Code, to call for the records and set aside the order passed in Criminal Appeal No.41 of 2020, dated 24/08/2021 on the file of the IV Additional District Court, Tirunelveli, confirming the



orders passed in CC No.8 of 2014 on the file of the Judicial Magistrate Court No.2 (CCIW-Special Court), Tirunelveli, dated 31/07/2020.

For Petitioner : Mr.K.R.Laxman
(In all cases)

For Respondent : Mr.B.Nambiselvan
(In all cases) Additional Public Prosecutor

COMMON ORDER

These criminal revisions have been filed against impugned orders passed by the IV Additional District Court, Tirunelveli, on 24/08/2021, confirming the orders passed by the trial court.

2.The common facts:-

The petitioner was the Secretary of the Tenkasi Panchayat Union Area Primary and Middle School Teachers and Staff Thrift and Credit Society Limited. He was in the post from 10/07/2009 to 09/07/2010. He collected the amount paid by the members of the Association, but failed to remit the same in the society account. On that basis, a case was registered in Crime No.2 of 2013 and the misappropriated amount is stated to be **Rs.66,000/-**. This is in respect of CrI.RC(MD)No.693 of 2021.



3.Crime No.2 of 2013 was registered for the amount misappropriated during the period of 02/06/2016 to 11/06/2007. The very same allegation has been made and the misappropriation amount is mentioned as **Rs.86,300/-**. This is in respect of CrI.RC(MD)No.695 of 2021.

4.For the period of misappropriation of the amount from 29/09/2010 to 28/09/2011, Crime No.2 of 2013 was registered and the amount misappropriated is stated to be Rs.57,200/-. This is in respect of CrI.RC(MD)No.696 of 2021.

5.For the period 12/06/2007 to 11/06/2008, the very same crime number is registered and the misappropriation amount is Rs.3,55,121/-. This is in respect of CrI.RC(MD)No.697 of 2021.

6.For the period from 13/06/2008 to 12/06/2009, the very same crime number was registered and the misappropriated amount is stated to be Rs.2,21,250/-. This is in respect of CrI.RC(MD)No.698 of 2021.

7.In all these matters, after completing the investigation process, final report was filed making allegations against the petitioner that he has committed



the offences punishable under sections 408, 477-A and 204 IPC. Since the amount are different and periods, even though the crime number is the same, separate final report has been filed, which has been taken cognizance by the trial court separately in CC Nos.6 to 10 of 2014.

8.In all the matters, at the conclusion of the trial process, the trial court came to the conclusion that the guilt of the accused has been proved by the prosecution beyond all reasonable doubt and accordingly, he was convicted and sentenced to undergo **one year simple imprisonment and imposed a fine of Rs.100/-** with default clause for each offence. All the sentences were ordered to be run concurrently.

9.Challenging the above said conviction and sentence, he preferred appeal before the appellate court namely the IV Additional District Judge, Tirunelveli, separately and the appeals have been rejected, confirming the conviction and sentence passed by the trial court. Challenging the concurrent findings, these criminal revisions have been preferred.

10.Heard both sides.



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11.Only limited issue involved in all these revision petitions. In the grounds of revision, it has been stated by the petitioner that the recording of conviction and sentence were made on the ground that this petitioner failed to produce the day today book, which will indicate the daily collection of the money; The prosecution ought to have produced the documents before the trial court. But that was not done and the petitioner was not the employee of the society, but only holding additional charge; Only during the tenure of the erstwhile Secretary of the society, incurred loss. He has also made some sort of grounds for rejecting the evidence and the above said day book was also found to be handed over during the enquiry under section 81 of the Tamil Nadu Central Cooperative Act; In-turn handed over to the prosecution. So the above said offences are not attracted.

12.In the light of the above said facts, now let us straightway go to the judgment of the appellate court on this aspect.

13.No doubt that the evidence of the enquiry officer was not taken into account, either by the trial court or by the appellate court. It is a mistake not only on the part of the trial court, but also on the part of the appellate court. We will come to the point later.



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14.The contention that the petitioner was holding only additional charge is not correct, since as per the resolution, dated 20/02/2006 (Ex.P41), the petitioner was appointed as Secretary in-charge and also took over the charge, on 21/02/2006. He was appointed as Secretary in-charge and towards discharge of his duty as per the procedure and rules. There is specific allegation to the effect that during that period only, he misappropriated the money, which was collected by him from the members and failed to remit the same in the account. Because of the delay of 15 years in taking out the auditing, it has been taken advantage by the petitioner. Now he wants to improve his defence on the basis of the above said delay. But here this is related to the duty of this petitioner. Simply because, auditing was not undertaken for 15 years that will not strength his defence. Simply blaming the higher officials will not also give any benefit to the petitioner. There is an evidence by PW9 to the effect that the petitioner printed separate receipt books and utilised the same to collect the money from the members of the society. So this itself shows the criminal intent and misconduct on the part of the petitioner.

15.Now coming back to the contention on the part of the petitioner that day book was handed over to the enquiry office namely PW9, who in turn handed over the same to the



Investigating Officer is also not correct on record. Because as per the evidence of PW9, the day book was maintained by the petitioner only for one year namely from 20/02/2006 to 31/03/2007. On the previous occasion also, misappropriation has been taken place. It has been Balakrishnamoorthy, who was holding the Secretary of the society. Thereafter, the petitioner was placed additional in charge. So it appears that this petitioner is continuing the very same misappropriation process.

16.Regarding availing of loan by the members was also proved before the trial court by producing Ex.P51 to P62, P64 and P68. So no denial can be made with regard to the admission of the members.

17.As mentioned earlier, printing of separate receipt books for the purpose of collecting the loan amount from the members will show the criminal intention as mentioned earlier. On that sole basis, I find that the conviction that was recorded by the trial court as confirmed by the appellate court cannot be found fault. So, I find no reason to interfere in the conviction portion also. Of course, the learned counsel appearing for the petitioner has not advanced much argument on this point.



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18.Regarding the sentence, a request has been made by the petitioner to the effect that he is ready to pay the entire alleged misappropriation amount to the Official Liquidator of the society and also produced the demand drafts taken and drawn in favour of the Official Liquidator. He has also produced the receipt for the same. It has been submitted that the above said demand drafts have been handed over. So on that ground, he seeks modification of the sentence. Now, the petitioner has been in custody from 25/02/2022 to 03/01/2023. So I am of the considered view that the sentence period must be reduced to the period already undergone.

19.Even though in the judgment of the trial court, even there was no order to run all the sentences concurrently, I am of the considered view that the above said order can be modified to the effect in all the matters, the sentences are ordered to run concurrently.

20.In the result, all the Criminal Revisions are **partly allowed**, by reducing the sentence awarded to the petitioner/accused to the sentence already undergone by him I.e., from 25/02/2022 to 03/01/2023. In respect of fine amount, the findings of the trial court is confirmed. The petitioner may be set at liberty, forthwith, unless his



detention is required in connection with any other case.

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03/01/2023

Index:Yes/No
Internet:Yes/No
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To,

- 1.The IV Additional District Judge,
Tiruneveli.
- 2.The Judicial Magistrate No.2,
Tirunelveli.
- 3.The Inspector of Police,
Commercial Cases Investigation Wing,
Tirunelveli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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Cr1.RC(MD)Nos.693, 695,
696, 697 and 698 of 2021

03/01/2023