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Crl.R.C.(MD)No.530 of 2016



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 06.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C.(MD)No.530 of 2016

K.M.Sadanantham

... Petitioner/Appellant/Sole Accused
vs.

State Rep. by
The Inspector of Police,
District Crime Branch,
Karur.

Crime No.3 of 2010

... Respondent/Respondent/Complainant

PRAYER : This Criminal Revision Petition has been filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Karur in Crl.A.No.28 of 2016 by Judgment dated 27.05.2016, confirming the conviction and sentence of imprisonment imposed by the learned Judicial Magistrate No.I, Karur in C.C.No.399 of 2011 by the Judgment, dated 23.03.2016 and set aside the Judgments of the Courts below.

For Petitioner : Mr.P.Athimoolapandian

For Respondent : Mr.T.Senthilkumar
Additional Public Prosecutor

For Intervenor : Mr.R.Suresh



ORDER

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This Criminal Revision Petition is directed against the Judgment passed by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Karur in Crl.A.No.28 of 2016 dated 27.05.2016, confirming the conviction and sentence of imprisonment imposed by the learned Judicial Magistrate No.I, Karur in C.C.No.399 of 2011 by the Judgment, dated 23.03.2016 and set aside the same. Thereby, both the Courts below convicted the petitioner for the offence under Section 406 IPC and sentenced him to undergo one year Simple Imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months Simple Imprisonment.

2.The case of the prosecution is that the de-facto complainant and the petitioner are brothers. They are trustees of one Arumuga Nadar Annathana Sathiram. The property belongs to the trust was sold out and the amount was deposited in the trust account to the tune of Rs. 13,50,000/-. As per the order passed by the Court, the accrued interest of the said amount can be received by the resolution. Thereafter, part of the land to an extent of 762 sq.ft. belongs to the members of the trust was acquired for laying road by the National Highways Authorities and a sum



of Rs.4,97,515/- was deposited in the name of the trust on 08.03.2007.

On the next day on 09.03.2007, the petitioner herein had withdrawn a sum of Rs.4,95,000/- without consent or knowledge of the other trustees. Thereby, the petitioner caused loss to the trust. On the complaint, FIR was registered in Crime No.3 of 2010 against the petitioner for the offences under Sections 406 and 420 of IPC.

3.On the side of the prosecution, 11 witnesses were examined as P.W.1 to P.W.11 and exhibited 26 documents as Ex.P.1 to Ex.P.26 and on the side of the accused, no one was examined and no documents were marked.

4.On perusal of the oral and documentary evidence, the Trial Court found the petitioner guilty for the offence under Section 406 of IPC and sentenced him to undergo one year Simple Imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months Simple Imprisonment. The offence under Section 420 IPC is concerned, the Trial Court acquitted the petitioner. Aggrieved by the same, the petitioner preferred an appeal in Crl.A.No.28 of 2016 before the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Karur and the same was dismissed by confirming the conviction and sentence imposed



by the trial Court. Hence, the petitioner has filed the present petition with the above said prayer.

5. Admittedly, the petitioner is also one of the members of the trust along with the de-facto complainant in the said Arumuga Nadar Annathana Sathiram. The part of the land was acquired for laying the road and a sum of Rs.4,97,515/- was deposited in the trust account by the National Highways Authority on 08.03.2007. On the next day on 09.03.2007, the said amount was withdrawn by the petitioner. Thereafter, the said amount was also deposited in the trust account by the petitioner during the anticipatory bail was considered by the Court below. The trust is also consisting other trustees, namely, the other family members. The allegation is that the petitioner had withdrawn the amount, which was deposited by the National Highways Authority for the land acquired by them, without consent or knowledge of the trustees. It is seen that the petitioner had withdrawn the said amount on 09.03.2007. The complaint was lodged only on 21.02.2010. Even on the day of withdrawal of the amount itself, the de-facto complainant had knowledge about the withdrawal of the said amount. However, he lodged the complaint only on 21.02.2010. There is absolutely no explanation by the prosecution for the delay in lodging of the complaint. Further, the



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defence taken by the petitioner is that the said amount was withdrawn only to renovate the trust building. However, the petitioner had already deposited the entire amount, which was withdrawn by him, while he was granted anticipatory bail. Now, he is also ready and willing to deposit some more amount as imposed by this Court. Since the petitioner is also one of the trustees and both the Courts below have rightly acquitted the petitioner for the offence under Section 420 IPC. Insofar as the offence under Section 406 IPC is concerned, the prosecution has proved the case.

6.Considering the submissions made by the petitioner and also considering the fact that the petitioner is ready and willing to deposit some more amount in the name of the trustees towards the trust account, this Court is inclined to set aside the sentence alone imposed by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Karur in Crl.A.No.28 of 2016 by Judgment dated 27.05.2016.

7.In view of the above, the sentence imposed against the petitioner for the offence under Section 406 of IPC by the Courts below is hereby set aside on condition that the petitioner shall deposit a sum of Rs.1,00,000/- (Rupees One Lakh only) to the credit of Arumuga Nadar Annathana Sathiram and produce the receipt/acknowledgement before



the respondent police, on or before **10.04.2023**, failing which, the sentence imposed by the Courts below shall stand automatically restored and in that event, the respondent police is at liberty to secure the petitioner in order to undergo the remaining period of sentence.

8. With the above modification, this Criminal Revision Case is partly allowed.

06.03.2023

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To

1. The Sessions Judge, Mahalir Neethimandram
(Fast Track Mahila Court), Karur.
2. The Judicial Magistrate No.I, Karur.
3. The Inspector of Police,
District Crime Branch,
Karur.
4. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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