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Crl.R.C.No.834 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2024

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.R.C.No.834 of 2021

1.G.Pandiyan

2.P.Manoharan

... Petitioners

Vs.

The State represented by
Inspector of Police,
Pudupattinam Police Station.
(Cr.No.208/2003)

... Respondent

PRAYER: Criminal Revision filed under Section 397 of Cr.P.C., to call for the records and set aside the order of conviction dated 17.12.2020 passed by the learned Additional District Sessions Judge, Mayiladuthurai in Crl.A.No.21 of 2016 confirming the order of conviction dated 20.10.2016 made in C.C.No.448 of 2007 on the file of Judicial Magistrate, Sirkali.

For Petitioners : Mr.D.Baskar

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

This Criminal Revision has been filed to set aside the order of conviction dated 17.12.2020 passed by the learned Additional District Sessions Judge, Mayiladuthurai in Crl.A.No.21 of 2016 confirming the order of conviction dated 20.10.2016 made in C.C.No.448 of 2007 on the file of Judicial Magistrate, Sirkali.

2.The petitioners, who are A1 and A2 in C.C.No.448 of 2007, were convicted by the trial Court by judgment dated 20.10.2016 and sentenced to undergo one year rigorous imprisonment each and to pay a fine of Rs.1,000/- each, in default, to undergo one month rigorous imprisonment each for offence under Section 408 of I.P.C. Aggrieved against the same, the petitioners preferred an appeal in C.A.No.21 of 2016 before the Additional District and Sessions Judge, Mayiladuthurai. The learned Sessions Judge, by judgment dated 17.12.2020 partly allowed the appeal, modifying the sentence



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from one year to six months rigorous imprisonment, against which, the present revision has been filed.

3.The case of the prosecution is that the first petitioner/A1 is the Secretary of Madhanam Primary Co-operative Society and Bank. The second petitioner is the Senior Accountant of the Society and the deceased A3/Kabilan was the Salesman of the Society. The petitioners 1 and 2 are the Joint custodian of the jewels, pledged for jewellery loan. One key will be with each petitioners. On 12.05.2001, the second petitioner handed over the custodian role to the deceased accused Kabilan. PW3/Alamelu on 09.02.2001, pledged jewels of chain, bangles and ring weighing 49.100 gms for Rs.12,000/-. On 11.05.2001, in the stock register it was recorded that the jewels were kept in 32 packets. But during inspection on 11.05.2001, it was found that only 31 packets available. Hence, for the period from 09.02.2001 to 11.05.2001, the petitioners, who were joint custodian of the jewels, not properly accounted for one packet of jewel of PW3. This was found on



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11.05.2001, when the inspection was conducted. Further, on 12.05.2001, the third accused Kabilan recorded in page 183 of the stock register that 32 packets available. Hence, the petitioners and the deceased accused were proceeded for offence under Sections 408, 468, 471 r/w 34 of I.P.C. Since A3/Kabilan passed away during the pendency of the trial, the petitioners were acquitted for charges under Sections 468 and 471 of IPC and charge as regards A3 got abated. But the petitioners were convicted for offence under Section 408 of IPC.

4. During trial, on the side of the prosecution, PW1 to PW9 examined and Exs.P1 to P10 marked. On the side of the defence DW1 examined and no documents marked. On conclusion of the trial, the Trial Court on the evidence of witnesses and the materials produced, convicted the petitioners. The Lower Appellate Court confirmed the conviction and modified the sentence as stated above.



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5.The contention of the learned counsel for petitioners is that it is admitted by PW2 that the Society was functioning in two places. DW1 also confirms two places that near Manniyaru on both sides of the river, one on the northern side and another on the southern side with a distance of 200 meters in one building records would be maintained. In another building, jewels and cash would be kept safely. In this case, PW1 is the enquiry officer, who conducted enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act (hereinafter referred as 'the Act'). In his report, he states that on 09.05.2001 he came for inspection, found the locker not sealed since A1 and A2 not available, seals placed and inspection conducted on 11.05.2001. Further, on 11.05.2001, in the presence of PW8 and PW5, PW1 and PW2 conducted inspection, the missing one packet in safe locker available in the cash box. On further enquiry, it was found that PW3 came to the Society to redeem the jewels. Hence, that packet alone was taken and kept in the cash box. But this explanation not acceptable for the reason that locker was sealed



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on 09.05.2001 and thereafter it was opened on 11.05.2001. During this period
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nobody had access to the locker. But on 12.05.2001, it is recorded that 32 packets were found. Hence, it was mystery, and the petitioners stealthily kept the missing packet in the cash box was the finding of the inspection witnesses PW1 and PW2, which cannot be accepted as true in the absence of any evidence.

6.Added to it, PW3 is the wife of A1. Hence, this packet has been later replaced. This may not be proper for the reason that the evidence of PW3 is that she came to redeem her jewels. PW5 evidence is that he came to the Society after the inspection was completed by PW1 and PW2. It is not seriously disputed that one packet, which was found missing from the jewel locker, was found in the cash box. Further, PW3 paid the loan amount, redeemed jewels, issuance of loan amount and payment of Rs.12,000/- all recorded properly in the account books. In view of the same, there is no misappropriation committed by the petitioners. It is only a dereliction of duty



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without any malafide intention.- In view of the same, no offence committed.

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Further, now the petitioners are aged about 70 and 65 years, both retired from the service of society. Added to it, after enquiry under Section 81 of the Act, it was found that there is no loss sustained by the Society and no liability fixed and no proceedings under Section 87 of the Act initiated against anyone including the petitioners. It is not in dispute, Society not sustained any loss. Hence, prayed for setting aside the judgment of the trial Court as well as Lower Appellate Court.

7.The learned Additional Public Prosecutor submitted that PW1 is the Deputy Registrar of the Co-operative Society. PW2 is the jewellery appraiser and PW8 is another jewellery appraiser. All the three went for inspection and inspected the society locker, on 09.05.2001, found the locker not properly sealed as per procedure. Since A1 and A2 were not available, the locker was sealed and thereafter on 11.05.2001 it was opened. At that time,



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31 packets were found in the locker and one packet found missing. When the accused were enquired they were unable to give proper explanation and later one packet of jewel, pledged by PW3 was available in the cash box. The explanation given by PW3, who is none other than the wife of A1, was not acceptable for the reason that on 09.05.2001 the locker was sealed and later it was opened on 11.05.2001. In the meanwhile, there is no access to the locker and how one packet available in the cash box on 11.05.2001 is nothing but handy work of the petitioners. Further the deceased accused A3 on 12.05.2001, in the ledger entry recorded that 32 packets were available in the locker. When PW3 was to redeem the jewels, placing of 32 packets in the locker is not possible. Hence, an enquiry was caused under Section 81 of the Act and the enquiry officer/PW1 confirmed the misappropriation committed by the accused and the petitioners along with A3 committed forgery of the society register. During trial, A3 passed away. A1 and A2 were convicted for offence under Section 408 of I.P.C. The Lower Appellate Court



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independently considering the evidence, rightly confirmed the conviction. He further submitted that in this case the petitioners being joint custodian of the locker and jewels of the society, were entrusted with the property and for missing of one packet they were unable to give proper explanation, hence rightly convicted.

8.Considering the submissions made and on perusal of the materials, it is seen that on 09.05.2001, PW1, PW2 and PW8 came for inspection, found locker not properly sealed, since A1 and A2 were not available then. PW1 sealed the locker and thereafter again came on 11.05.2001 to conduct inspection. On 11.05.2001, in the presence of petitioners, locker opened and found 31 packets of jewel available and one packet found missing. The missing packet was later found in the cash box. The evidence of PW3 is that she pledged jewel on 09.02.2001 for Rs.12,000/- . She came for redeeming the jewels on 09.05.2001, paid the amount and the jewel was not handed over and later it was handed over from the cash box.



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The payment of Rs.12,000/- recorded in the account register, which is not disputed. The society not sustained any loss in the above transaction. Of the 32 packets, 31 packets found in the locker and one was available in the cash box, for which, the explanation of PW3 and PW8 appears reasonable. Further, the Society was functioning in two places 200 meters apart, in one place locker was available and in another place loan transaction. Hence, the possibility of jewels of PW3 ready for redemption, was kept in the cash box, taking this packet into account, it is proved all 32 packets available in the Society. The contemporary records confirm the same, petitioners acquitted from the charges of 468 and 471 of I.P.C. Further, the admitted position is that there is no enquiry under Section 87 of the Act for recovery confirming that society not sustained loss. This fact not considered by both trial Court and Lower Appellate Court. In view of the same, this Court finds the conviction order passed by the trial Court and confirmed by the Lower Appellate Court, is not proper and sustainable.



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9. In view of the above, the judgment, dated 20.10.2016 in C.C.No.448 of 2007, passed by the learned Judicial Magistrate, Sirkali and the judgment dated 17.12.2020 in C.A.No.21 of 2016 passed by the learned Additional District and Sessions Judge, Mayiladuthurai are set aside and the revision is, accordingly, allowed. The petitioners are acquitted and discharged from the above case.

04.09.2024

Index : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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To

1. The Judicial Magistrate,
Sirkali.

2. The Additional District and Sessions Judge,
Mayiladuthurai.

3. The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

rsi

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