IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2024

CORAM

THE HONOURABLE MR JUSTICE SUNDER MOHAN

CRL RC. 955 of 2024

MASILAMANI ... PETITIONER

Vs

STATE REP BY
THE INSPECTOR OF POLICE,
CCIW-CID, CUDDALORE,
CR.NO.10/2015. ... RESPONDENT

PRAYER: Criminal Revision Case filed under Sections 397 r/w 401 of Cr.P.C., to call for the records and set aside the judgment passed in C.A.No.6 of 2020 dated 18.09.2020 on the file of the Principal Sessions Court, Cuddalore confirming the order passed in C.C.No.104 of 2016 dated 21.02.2020 on the file of the learned Judicial Magistrate No.II, Panruti.

For Appellant(s):

T.MURUGANANTHAM
M.RAJKUMAR
M.PRAVEEN

For Respondent(s):

Mr.V.J.PRIYADARSANA
GOVERNMENT ADVOCATE (CRL. SIDE)

MR.S.UDAYA KUMAR
GOVERNMENT ADVOCATE (CRL. SIDE)

MR.R.VIVEKANANDAN - AMICUS CURIAE

ORDER

This Criminal Revision Case is filed challenging the judgment made in C.A.No.6 of 2020 dated 18.09.2020 on the file of the Principal Sessions Court, Cuddalore, confirming the conviction and sentence passed in C.C.No.104 of 2016 dated 21.02.2020 on the file of the learned Judicial Magistrate No.II, Panruti.

2. The case of the prosecution is that the petitioner/A2 was working as an Appraiser in the defacto complainant's bank and had given a false appraiser report as regards the genuineness of the gold ornaments and the co-accused had obtained loan on the basis of the said false report and failed to repay the said sum causing loss to the bank.

3. The complaint was investigated by the respondent and a final report was filed against the petitioner and the person/persons who had obtained loan from the complainant's bank on the basis of the false appraiser report for the offences under 120-B, 408, 420 and 477A r/w

109 of the IPC.

4. The prosecution had examined 17 witnesses and marked Ex.P1 to Ex.P137.

5. The trial Court found the petitioner guilty of the offence under Sections 408, 420 and 477A of the IPC and sentenced the petitioner to undergo two years rigorous imprisonment and to pay a fine of Rs.10,000/- for each of the offences and in default to suffer six months simple imprisonment. The sentences were directed to run consecutively. The trial Court however, acquitted the co-accused as there was evidence to show that it was the petitioner, who had misused the name of the co-accused to obtain loan and he was the ultimate beneficiary and not a co-accused. The trial Court had further directed the sentences imposed on the petitioner in other similar cases viz., C.C.Nos.100/2016, 101/2016, 102/2016 and 103/2016, to run concurrently.

6. The lower appellate Court confirmed the judgment of conviction and the sentence imposed on the petitioner. Hence, the revision.

7. Since, certain legal issues had to be addressed, this Court had appointed Mr.R.Vivekanandan, learned advocate as *Amicus Curiae*.

8. Heard Mr.T.Muruganantham, learned counsel for the petitioner; Mr.C.E.Pratap, learned Government Advocate (Crl.Side) and Mr.S.Udaya Kumar, learned Government Advocate (Crl.Side) appearing for the responent/State; and Mr.R.Vivekanandan, learned *Amicus Curiae*.

9. The learned counsel for the petitioner would submit that having acquitted the co-accused in whose name the loan was obtained, the Courts below had erroneously convicted the petitioner alone; that the appellate Court had erroneously relied upon the statements said to have been given by the petitioner in the enquiry conducted under Section 81 of the Tamil Nadu Co-operative Societies Act; and that in any case, the judgment of the trial Court in directing the sentences imposed on the petitioner to run consecutively may be modified, considering the nature of the offence and the sentences may be directed to run concurrently.

10. The learned Additional Public Prosecutor per contra would submit that there is evidence to show that the petitioner has committed the offence punishable under Sections 408, 420 and 477(A) of the IPC and that he was the ultimate beneficiary and therefore, the Courts below on the basis of the oral evidence and the documents filed by the prosecution, had rightly convicted the petitioner and in any case, the petitioner has not made out any ground for interference in the above revision.

11. Mr.R.Vivekanandan, learned *Amicus Curiae* submitted that on facts, the offences under Sections 420 and 477A of the IPC would be made out and the conviction for the offence under Section 408 of the IPC cannot be sustained. The learned *Amicus Curiae* submitted that the prosecution had not established that the petitioner was entrusted with either the property or dominion of the property to attract the offence under Section 408 of the IPC. Further , in support of his submission that the offence under Section 477A IPC is made out, he relied upon the judgment of the Hon'ble Supreme Court in ***S.Harnam Singh vs. The State (Delhi Admn.),*** reported in **(1976) 2 SCC 819.**

12. The learned *Amicus Curiae* further submitted that if the accused is convicted for more than one offence in a trial, then it would be the discretion of the Court to either direct the sentences to run concurrently or consecutively, depending upon the facts and circumstances of the case.

13. I have considered the rival submissions made by the learned counsel on either side and perused the materials available on record.

14. It is seen that from the evidence on record that the prosecution had examined the Managing Director of the Co-operative Marketing Society and also the Assistant General Manager of the Cuddalore District Central Co-operative Bank, the defacto complainant in this case, who had deposed that on verification of the pledged jewels, they found that the gold jewels for which the petitioner had given appraiser report were fake.

15. One Shivakumar, the Head Appraiser of the Bank had deposed

that on verification, he found that the jewels were fake. Further the prosecution had adduced evidence to establish that on obtaining the appraiser report, they would receive the jewels and on verification of the jewels, would keep the jewels in a safe deposit locker and that there is no way that the jewels could be removed or changed.

16. One Chakravarthy [PW16], had deposed that the petitioner had committed misappropriation to the tune of Rs.10,69,700/- totally by misusing the names of five different persons (It may be mentioned here that five cases were filed against the petitioner in C.C.Nos.100, 101, 102, 103 and 104 of 2016 and the present revision arises out of C.C.104 of 2016). All the revisions were heard together, by this Court.

17. The petitioner/accused had given a statement before the enquiry officer appointed under Section 81 of the Tamil Nadu Co-operative Societies Act, that the other accused had signed the loan documents at his instance; that they were only name lenders; and that he would take full responsibility to repay the misappropriated amount.

18. Considering all the above evidence, the Courts below found that the petitioner is guilty of the offences and this Court therefore finds no infirmity in the finding of guilt rendered by the Courts below. The Courts below had convicted the petitioner for the offences under Sections 408, 420 and 477A of the IPC.

19. As stated earlier, the petitioner had submitted a false appraiser report and had induced the bank to grant loan to certain individuals and the petitioner had collected the loan amount from the said persons and thereby committed the offences. The act of the petitioner would certainly amount to deception which had induced the bank to part with the loan amount. Therefore, there is no doubt that the petitioner had committed the offence under Section 420 of the IPC.

20. In order to prove the offence of criminal breach of trust, it is well settled that the person accused of the said offence must be entrusted with either the property or the dominion of the property, which is the main ingredient. The prosecution had not established that the petitioner

was given the job of lending and therefore, the fact that the funds of the bank was entrusted to him has not been established. Further, the offence of cheating and misappropriation would not go together on the same set of facts. Therefore, this Court is of the view that the offence under Section 408 of the IPC has not been established. Accordingly, the finding of guilt and sentence imposed upon the petitioner by the Courts below for the offence under Section 408 of IPC, is set aside.

21. As regards the offence under Section 477(A) of the IPC, the Hon'ble Supreme Court in ***S.Harnam Singh's case*** [cited supra] had held as follows:

> "12. Section 477-A, Penal Code reads thus:
>
> > Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant wilfully, and with intent to defraud, destroys, alters, mutilates or falsifies any book, paper, writing, valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such book, paper, writing, valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

> Explanation : It shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defrauded or specifying any particular sum of money intended to be the subject of the fraud, or any particular day on which the offence was committed.
>
> 13. An analysis of this section would show mat in order to bring home an offence under this provision, the prosecution has to establish (1) that at the relevant time, the accused was a clerk, officer or servant; and (2) that acting in that capacity he destroyed, altered, mutilated or falsified any book, paper, writing, valuable security or account which belonged to or is in the possession of his employer or has been received by him for and on behalf of his employer etc. (3) that he did so willfully and with intent to defraud."

22. From the above observations it would be clear that in order to attract the offence under Section 477A of the IPC, all the three ingredients mentioned in paragraph No.13 of the Hon'ble Supreme Court has to be established.

23. The petitioner was working as an officer of the bank. He had also willfully done the above act with an intent to defraud. The only

question is whether he had falsified the book. From the evidence it is seen that besides giving an appraiser report, he had also made false entries in the Register maintained by the Bank both with regard to the quality of the jewels as well as the quantity of the jewels. Therefore, these entries made by him would amount to falsification of the Register maintained by the Bank. Hence, this Court is of the view that all the three ingredients have been established and the offence under Section 477A is made out. Therefore the finding of guilt and sentence imposed upon the petitioner by the Courts below for the offences under Sections 420 and 477A of the IPC, are confirmed.

24. The next question is whether the sentences imposed for these two offences should run concurrently or consecutively as directed by the trial Court.

25. Section 31 of the Cr.P.C., deals with sentence in case of conviction of several offences at one trial. The said provision reads as follows:

> 31. Sentence in cases of conviction of several offences at one trial.
>
> 1. When a person is convicted at one trial of two or more offences,

the Court may, subject to the provisions of section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments, prescribed therefore which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

2. In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court;

   Provided that—

   1. in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;
   2. the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.

3. For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.

26. The above provision makes it clear that subject to the provisions of Section 71 of the IPC, the sentences of imprisonment shall run consecutively, unless the Court directs that such punishments shall run concurrently.

27. The Hon'ble Supreme Court in ***O.M.Cherian alias Thankachan v. State of Kerala and others,*** reported in **(2015) 2 SCC 501** had an occasion to deal with the aforesaid provision. The Hon'ble Supreme Court after discussing the earlier decisions on the subject, held in paragraph No.20 as follows:

> "20. Under Section 31 Cr.P.C. it is left to the full discretion of the Court to order the sentences to run concurrently in case of conviction for two or more offences. It is difficult to lay down any straitjacket approach in the matter of exercise of such discretion by the courts. By and large, trial courts and appellate courts have invoked and exercised their discretion to issue directions for concurrent running of sentences, favouring the benefit to be given to the accused. Whether a direction for concurrent running of sentences ought to be issued in a given case would depend upon the nature of the offence or offences committed and the facts and circumstances of the case. The discretion has to be exercised along the judicial lines and not mechanically."

Therefore, the discretion is vested in the Court with regard to whether the sentences shall run concurrently or consecutively and the said discretion would depend upon the facts and circumstances of the case.

28. In the instant case, the act of the petitioner is that by giving a

false appraiser report, he had obtained loans in the name of third parties and appropriated it to himself and thus, committed the two offences. Therefore, in the facts and circumstances of this case, this Court is of the view that the sentences imposed for the offences under Sections 420 and 477 A of the Cr.P.C., can be directed to run concurrently.

29. It is also submitted by the learned counsel for the petitioner that the petitioner is unable to pay the fine and the default sentence may be reduced.

30. The learned Government Pleader (Crl.Side) on instructions submitted that during trial, the petitioner was in custody for a period of 16 days and thereafter, he is in custody, from the date of conviction by the trial Court i.e. from 21.02.2020. He further submitted that though vide order dated 24.06.2024 in Crl.M.P.No.7951 of 2024, this Court suspended the sentence imposed on the petitioner on certain conditions, the petitioner is in custody till date, since the petitioner had not complied with the conditions.

31. Considering the facts and circumstances and the fact that the petitioner has served four years and ten months of sentence, this Court is of the view that the default sentences can be reduced to three months simple imprisonment instead of six months simple imprisonment. Accordingly, the judgment passed in C.A.No.6 of 2020 dated 18.09.2020 on the file of the Principal Sessions Court, Cuddalore confirming the order passed in C.C.No.104 of 2016 dated 21.02.2020 on the file of the learned Judicial Magistrate No.II, Panruti, is modified as follows:

(i)The conviction and sentence imposed upon the petitioner by the Courts below for the offence under Section 408 of IPC, is set aside;

(ii)The conviction of the petitioner by the Courts below for the offences under Sections 420 and 477A of the IPC, are confirmed and the petitioner is sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs.10,000/- for each of the offences and in default to suffer three months simple imprisonment;

(iii)The sentences are ordered to run concurrently;

(iv) The trial Court had already directed that the sentences imposed in other C.C.Nos., shall run concurrently and the same is confirmed. Hence, the sentences imposed by this Court in Crl.R.C.Nos.956, 957, 958 and 959 of 2024, shall run concurrently, with the sentence imposed in this revision;

(v)It is directed that the period of sentence already undergone by the petitioner shall be set off under Section 428 Cr.P.C.;

(vi)If the petitioner has served the sentence and the default sentences, as directed by this Court above, he shall be released forthwith, unless his presence is required in connection with any other case.

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

13-12-2024

Index: Yes/No
Speaking/Non-speaking order
Neutral citation: Yes/No.
ars

To

1. The Principal Sessions Judge,

Cuddalore.

2. The Judicial Magistrate No.II,
Panruti.

3. The Inspector of Police,
CCIW-ID,
Cuddalore.

4. The Superintendent of Prisons,
Central Prison, Cuddalore.

5. The Public Prosecutor,
High Court, Madras.

SUNDER MOHAN, J.

ars

Crl.R.C.No.955 of 2024

(1/5)

13.12.2024