IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2024

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

Crl.R.C.No.752 of 2017

Munusamy ... Petitioner

Vs.

State represented by
The Sub Inspector of Police,
C.C.I.W.C.I.D. Vellore. ... Respondent
(Crime No.12/2003)

Prayer : Criminal Revision filed under Section 397 r/w. 401 of Criminal Procedure Code to set aside the judgment and orders dated 29.03.2016 passed in C.A.No.113/2012 by the I Additional District and Sessions Judge, Vellore, confirming the judgment and orders dated 28.06.2012 passed in C.C.No.28/2005 by the learned Judicial Magistrate No.II, Vellore.

For Petitioner : Mr.S.Sairaman
For Respondent : Ms.A.Shahana Fathima, GA (Crl. side)

ORDER

Challenging the conviction and sentence passed in C.A.No.113/2012 by the learned I Additional District and Sessions Judge, Vellore, confirming the conviction and sentence passed in C.C.No.28/2005 by the learned Judicial Magistrate No.II, Vellore, the present criminal revision case is filed.

2. The case of the prosecution as could be discerned from the oral and documentary evidence is as follows:

Thiru. Thandavamoorthy (P.W.2), the then Deputy Registrar of Kommeswaram Primary Agricultural Co-operative Bank, received a complaint from Thiru. Chellam (P.W.3), the then Special Officer of Kommeswaram Primary Agricultural Co-operative Bank and ordered for an enquiry under Section 81 of the Act. He appointed Thiru. Raviraj (P.W.8) the Sub Registrar of the Bank as an enquiry officer vide his order (Ex.P3) dated 28.10.2002. P.W.8 conducted the enquiry and submitted a report (Ex.P2) to Thiru. Kripanandam (P.W.1) the then Deputy Registrar of the Bank after elaborating the duties and responsibilities of the present revision petitioner. He had reported thus :

i. The revision petitioner with an intention to defraud the society, its members and staff did not give credit to the bank account, the sale price of the gunny bags to the tune of Rs.65,835/- and misappropriated the same for his personal gain.

ii. He took the EPF amount of the employers of the society without any permission, approval or resolution on various dates to the tune of Rs.1,45,000/-

iii. Thiru.Kripanandam (P.W.1) after analysing the enquiry report (Ex.P2) submitted by P.W.8, sent a letter dated 12.11.2003 (Ex.P1) to the Superintendent of Chennai to initiate action against the present revision petitioner. The Superintendent of the Society called for a detailed report from Senthil Kumar (P.W.10), Special Officer of the Society with regard to swindling of funds from EPF Account by the revision petitioner. P.W.10 after inspecting various records submitted his report (Ex.P19) stating that the revision petitioner had swindled the EPF amount of the staff of the society. Thereafter, the revision petitioner was placed under suspension on 01.11.2002.

iv. Thiru.Chakrapani (P.W.9), Special Officer conducted a surprise inspection in the Primary Agricultural Co-operative Bank Kommeswaram on 09.09.2002 for the period from 01.10.2001 to 31.03.2002 and found the swindling of various amounts by the revision petitioner. According to him, there was a deficit of Rs.39,508/- towards sale proceeds of gunny bags and that there was no proper entry in the loan Register of EPF account of the staff of the Bank. Accordingly, an entry for Rs.1,45,000/- was made towards EPF loan amount and that there was no justification for reconciliation of Bank Account with Central Co-operative Bank, Vellore for Rs.1,26,134/-. It is also his deposition that the revision petitioner did not collect deficit amount of Rs.26,000/- from five bidders of the jewels of the society which were sold on public auction. He submitted his report (Ex.P18).

v. Thiru. Jaganathan (P.W.5) is an agriculturist and is a resident of

Govindapuram. He was a Ex-President of Kommeswaram Primary Agricultural Co-operative Bank from 1996 to 2001 and in the year 2001 his successor informed him about the swindling of money by the accused.

vi. Thiru.K.Kumaran (P.W.6) was the successor of the accused. His evidence was that on 28.10.2002, the Deputy Registrar of the Bank conducted a surprise inspection and found the swindling of various EPF amounts by the accused.

3. Thiru.Thandavamurthy (P.W.2), the then Deputy Registrar, Kommeswaram Primary Agricultural Co-operative Bank received a complaint from Thiru.Chellam (P.W.3) and ordered for an enquiry under Section 81 of the Act. He appointed Thiru.Raviraj (P.W.8), Sub Registrar of the Co-operative Bank as an enquiry officer vide his orders dated 28.10.2002 (Ex.P3). Accordingly, P.W.8 conducted an enquiry and submitted a report dated 07.02.2003 (Ex.P2) to Thiru.Kripanandam (P.W.1), the then Deputy Registrar, Kommeswaram Primary Agricultural Co-operative Bank.

4. Thiru.Senthilkumar (P.W.10) was working as a Special Officer of the Bank between 25.09.2002 and 23.05.2003. As per the instructions of the Deputy Registrar, Tirupattur Zone, P.W.9 conducted an inspection in the bank on 28.10.2002 and sent a detailed report (Ex.P19) to the Deputy Registrar, Tirupattur Zone. He also recommended for an enquiry under Section 81 of the Act. He suspended the revision petitioner/accused on 01.11.2002.

5. Thiru.Bandari (P.W.11), the then Inspector of Police, Economic Offences Wing, Vellore, received a complaint from Thiru.Kirupanandam (P.W.1) with regard to the misappropriation of EPF funds by the present revision petitioner to the tune of Rs.1,89,452/-. He registered an FIR in Crime No.12/2003 for the offences punishable under Sections 409, 477A IPC (Ex.P20). He took up investigation and examined all the witnesses and recorded their statements individually under Section 161 Cr.P.C. After completing investigation, he laid a final

report against the revision petitioner / accused on 30.09.2004 before the Judicial Magistrate No.II, Vellore. When the accused was questioned under Section 313 Cr.P.C., with regard to the incriminating circumstances appearing in evidence against him, the accused denied of having committed any offence. However, he did not examine any witness on his side.

6. The learned trial court judge after analysing the oral and documentary evidence adduced on both sides, convicted the accused for the offence under Section 408 IPC and sentenced him to undergo Rigorous Imprisonment for a period of one year and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for one month. The sentence already undergone by the revision petitioner was set off under Section 428 Cr.P.C.

7. Aggrieved over the same, the revision petitioner/accused filed an appeal in C.A No.113/2012 before the I Additional District and Sessions Court, Vellore. The learned I Additional District and Sessions

Judge, Vellore confirmed the conviction and sentence passed by the Trial Judge, as against which, the present criminal revision is filed.

8. Heard Mr.S.Sairaman, learned counsel for the revision petitioner and Ms.A.Shahana Fathima, learned Government Advocate (Crl. side)

9. At the outset, it may be kept in mind that this Court while exercising its jurisdictional power under Section 397 Cr.P.C. cannot act as a second appellate court unless it is convinced that the conviction and sentence passed by both the Courts below are perverse.

10. Mr.S.Sairaman, learned counsel for the revision petitioner would contend that the prosecution had failed to file the original enquiry report under Section 81 of the Act and also the Day Book maintained by the Co-operative Society Bank. He drew the attention of this Court to the evidence of PW.8 and contended that even P.W.8 admitted that there are corrections in the original enquiry report under Section 81 of the Act and

in these circumstances, marking of the original enquiry report was absolutely necessary which the prosecution had failed to adduce.

11. It was also pointed out that subsequent to the enquiry under Section 81 of the Act, the present revision petitioner paid the entire amount alleged to have been misappropriated by him. However, the revision petitioner was dismissed from service without serving a copy of the domestic enquiry report.

12. Per contra, Ms.A.Shahana Fathima, learned Government Advocate (Crl. side) would contend that both the Courts below had, after analysing the oral/documentary evidence, rightly convicted and sentenced the revision petitioner and therefore, no interference is called for by this court and prayed for dismissal of the Criminal Revision Case.

13. In the instant case, Sakkarapani (P.W.9), Superintendent of Kommeswaram Primary Agricultural Co-operative Bank conducted a surprise inspection on 09.09.2002 and found misappropriation of EPF

funds by the present revision petitioner as stated above.

14. Thiru.Raviraj (P.W.8) in his enquiry report had given the details of misappropriation of funds from the bank by the revision petitioner. A copy of the enquiry report was filed before the trial court. The correction made in the enquiry report do not go to the roots of the case of prosecution for the trial court to direct the prosecution to summon the original enquiry report. When the evidence on record substantiates the contention of the prosecution there is no need for summoning the Day Book of the Bank. Moreover, more than one official made investigation at different points of time and detected the misappropriation.

15. The appellate court had in fact dealt with these aspects and had observed thus :

" The Employees Provident Fund register from April 1990 to 25.07.2002 marked as Ex.P6. In Ex.P2 enquiry report it is stated that on 31.03.2001 this appellant withdraw Rs.30,000 + 80,000 from the EPF account No.2 & 3 and credited into his Ex.P17 saving account and withdrawn on several dates

through the Ex.P10 withdrawal slips. The Ex.P17 is the account sheet of Saving Account No.522 and wherein it is shown Rs.80,000/- was credited into his saving account. The perusal of Ex.P6 to Ex.P9 EPF registers shows there was insufficient fund in his EPF account, but he withdrawn excess amount. The appellant not denied the credit of EPF amount into his saving account and withdraw on several dates through ex.P10 withdrawal slips. The learned Judicial Magistrate also correctly decided that this appellant has withdrawn totally a sum of Rs.1,45,000/- from the EPF account with knowing there was no sufficient amount.

11. It is is the case of the prosecution that the appellant has not presented proper application to withdrawal amount of Rs.1,10,000/- from his EPF account. Further, it is stated no order was passed by the then President of Co-operative Bank sanctioning Rs.1,10,000/- to withdraw from the appellant's EPF account and no resolution was passed approving the withdrawal of Rs.1,10,000/- from the EPF account. The appellant contended that it is the practice followed in the Co-operative bank that the employees allowed to withdraw amount from EPF account and get ratification order later on by passing resolution and order from the *president of the co-operative bank. The appellant admitted the withdrawal of Rs.1,10,000/- from the EPF account on 31.03.2001. But, he failed to prove that he has been submitted necessary application later on and necessary resolution also passed by the president and Directors. In this case, the appellant has not produced any evidence showing that he has made necessary application to withdraw Rs.1,10,000/- from his EPF account either before the Inquiry officer of before the Special Officer or before the trial court also. There was no evidence to show that the then President subsequently approved the withdrawal of Rs.1,10,000/- by the appellant from his EPF account and resolution was also passed ratifying the withdrawal of the EPF amount. The mere suggestion that it is the practice followed in the Co-operative Bank after withdrawing the amount from the EPF account they can obtain necessary orders from the president and board resolution. Therefore, it is very clear that this appellant withdraw Rs.1,10,000/- from his EPF account without following the due procedures normally adopted by the bank employees. Not only that, this appellant malafidely withdraw Rs.65,000/- of public fund for his personal use under the guise of loan taken from EPF account and hence the trial court correctly decided the appellant misappropriated the Co-operative bank fund and* *convicted the appellant for offence u/s. 408 of IPC."*

16. The above observation of the appellate court cannot be said to be perverse and therefore I do not find any reason to interfere with the concurrent findings recorded by both the Courts below. Therefore, the conviction under Section 408 of IPC by both the Courts below is hereby confirmed. As regards the sentence, it is seen from the records that the case was registered in the year 2003 and judgement in C.A.No.113/2012 was pronounced in the year 2016. Since he had already faced ordeal of trial from the year 2003 to 2016 the accused is sentenced to undergo rigorous imprisonment for a period of three months and to pay a fine of Rs.500/- in default, to undergo simple imprisonment for two weeks. The revision petitioner/accused shall surrender before the Judicial Magistrate No.2, Vellore, within 15 days from the date of receipt of a copy of this order / uploading of the order, failing which, the Trial Court shall take steps to secure him for undergoing the sentence.

17. In the result,

(i) This Criminal Revision Case is partly allowed.

(ii) While the conviction passed by the trial court is confirmed the sentence is modified as under:

Conviction	***Sentence***
Section 408 IPC	Rigorous Imprisonment for a period of three months and to pay a fine of Rs.500/-, in default, to undergo Simple Imprisonment for two weeks.

(iii) The sentence already undergone by him is set off under Section 428 Cr.P.C.

(iv) The sentence shall run concurrently.

(v) The revision petitioner/accused shall surrender before the Judicial Magistrate No.II, Vellore, within 15 days from the date of receipt of a copy of this order / uploading of the order, failing which, the Trial Court shall take steps to secure his presence for serving the remaining period of sentence.

03.04.2024

(10/11)

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl

To

1.The I Additional District and Sessions Judge, Vellore.

2.The Judicial Magistrate No.2, Vellore.

3.The Section Officer, Criminal Section, Madras High Court, Chennai.

R. HEMALATHA, J.

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