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Crl.M.P.No.19927 of 2023
in Crl.R.C.No.2222 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2024

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.M.P.No.19927 of 2023

in

Crl.R.C.No.2222 of 2023

S.Nagaraj
S/o.T.K.Subbaiyan

... Petitioner/Accused

Vs.

State by Inspector of Police,
C.C.I.W. CID,
Coimbatore Rural,
Coimbatore.
(Crime No.1 of 2006).

... Respondent/Complainant

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(2) r/w 439 of Code of Criminal Procedure, to suspend the sentence imposed on him in Crl.A.No.322 of 2017 on the file of the I Additional District and Sessions Judge at Coimbatore, dated 03.11.2023 confirming the judgment and sentence passed in C.C.No.9 of 2006 on the file of the Judicial Magistrate No.IV, Coimbatore dated 20.09.2017, pending the revision.

For Petitioner : Mr.B.Kumarasamy

For Respondent : Mr.C.E.Pratap
Government Advocate (Crl. Side)

ORDER



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This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner in Crl.A.No.322 of 2017 on the file of the learned I Additional District and Sessions Judge at Coimbatore, dated 03.11.2023 confirming the judgment and sentence passed in C.C.No.9 of 2006 on the file of the Judicial Magistrate No.IV, Coimbatore dated 20.09.2017, pending disposal of the above criminal revision.

2.The petitioner/A2 in C.C.No.9 of 2006 was convicted by the Trial Court by judgment dated 20.09.2017 for offence under Section 406 of I.P.C. and sentenced him to undergo two years simple imprisonment. Aggrieved against the same, he preferred an appeal before the learned I Additional District and Sessions Judge, Coimbatore in Crl.A.No.322 of 2017. The learned Sessions Judge, by judgment dated 03.11.2023, dismissed the appeal confirming the conviction and sentence passed by the trial Court, against which, the petitioner/A2 had filed a revision before this Court in Crl.R.C.No.2222 of 2023 along with the instant miscellaneous petitions seeking suspension of sentence and bail.



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3.The case against the petitioner is that the petitioner was the Vice President of Sri Ranganathar Handloom Weavers Co-operative Society, Coimbatore District. A1 was the President of the above Society. A3 was the salesman in the said Society. The petitioner/A2 along with A1 and A3 were charged and tried for offences under Sections 406 and 408 of I.P.C. A1 to A3 were entrusted with the stock of finished 1115 sarees worth about Rs.4,54,201.15 during the period between 01.04.2001 and 31.03.2002. The Special Officer took charge of the Society on 19.10.2001. On verification, he found stock deficit of 855 sarees. The responsibility was fixed against A1 to A3. 777 sarees were in the full responsibility of A1 and A2 and the remaining 72 sarees were in the responsibility of A3. The total value of stock deficit of 855 sarees is worth about Rs.3,28,150.65. Further, there was also charge against A1 for releasing the amount of Rs.15,000/- in excess from the suspense amount and misappropriating the same. Hence, charges were framed and trial proceeded against A1 to A3.



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4.During trial, on the side of the prosecution, PW1 to PW11 examined and marked Exs.P1 to P23. On the side of the defence, A1 examined himself as DW1 and marked Ex.D1. On conclusion of the trial, the Trial Court on the evidence of witnesses and the materials produced, convicted A1 and the petitioner/A2 for offence under Section 406 of I.P.C., A3 for offence under Section 408 of I.P.C. and the appeal preferred by the petitioner was dismissed by the Lower Appellate Court, confirming the conviction and sentence of the Trial Court.

5.The contention of the learned counsel for petitioner is that the petitioner is not a named accused in the F.I.R. He submitted that for any commission of offence under Co-operative Societies Act, it is prerogative that an enquiry under Section 84 of the Tamil Nadu Co-operative Society Act ('the Act') should be conducted. Based on section 84 enquiry report, the loss caused to the Society and misappropriation, if any found, thereafter, the surcharge proceedings under Section 87 of the Act to be initiated against the person against whom the report is filed. To recoup the loss committed to the Society and for default, the properties of defaulting persons can be attached.



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In this case, finding of the 84 enquiry report is not against the petitioner but against A1 and A3. As against A1/President of the Society, misappropriation of Rs.3,65,259.96 was fixed. As against A3/Employee of the Society, misappropriation of Rs.27,133/- was fixed. He further submitted that there is no surcharge proceedings initiated against the petitioner. Further submitted that he was informed that A1 and A3 paid the amount in the surcharge proceedings and as such the amount to the Society have been paid by them. He further submitted that the petitioner has surrendered before the Trial Court on 22.01.2024. Further submitted that the petitioner has arguable points and fair chance of success in this revision. Hence, he prayed for granting suspension of sentence to the petitioner.

6.The learned Government Advocate (Crl. Side) submitted that the petitioner's name not found in the 84 enquiry or in the F.I.R. would not absolve the petitioner for the criminal charges. During enquiry, the investigating officer found the active role played by the petitioner, which was further confirmed by the evidence of DW1 and Ex.D1, wherein A1/President of the Society, had produced a letter dated 12.06.2001 authorising the



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petitioner/Vice President to act as President. The Lower Court relied upon the By-laws of the Society, wherein it was mentioned that in case of vacancy in the office of the President, the Vice President acts as President and the same has been marked as Ex.P15. The Trial Court relying upon Ex.P15 and Ex.D1 had convicted the petitioner. The Lower Appellate Court also confirmed the same. He further submitted that the petitioner has surrendered before the Trial Court on 22.01.2024. However, he prayed for dismissal of the petition.

7.Considering the submissions made and on perusal of the material available on record, it is seen that in this case the enquiry report has been marked as Ex.P7, Special Report marked as Ex.P8 and the Stock Registers marked as Exs.P18 to P20. These registers not handled by the petitioner. In view of the same, relying upon Ex.P15 and Ex.D1 and convicting the petitioner needs to be re-considered. Further, the petitioner has already surrendered before the trial Court and now confined in prison. Finding that there is no surcharge proceedings initiated against the petitioner, further, taking note of the fact that there are arguable points involved in this revision



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and it would take some time for the revision to be taken up for final hearing,
this Court is inclined to suspend the sentence imposed on the petitioner.

8. Accordingly, the reliefs of suspension of sentence and bail are granted on the following conditions till the disposal of the above Criminal revision:

(a) The petitioner/accused is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) with two sureties, each for a like sum to the satisfaction of the learned Judicial Magistrate No.IV, Coimbatore.

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) The petitioner shall appear before the Trial Court once in three months at 10.30 a.m. on



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the first working day of the month, until the disposal of the revision and if he is not able to appear before the Trial Court on that day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the Trial Court on any other day in lieu of the date of his absence as directed by the Trial Court.

9. Accordingly, this Criminal Miscellaneous Petition is ordered.

23.01.2024
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Note: Issue order copy on 24.01.2024



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To

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- 1.The I Additional District and Sessions Judge
Coimbatore.
- 2.The Judicial Magistrate No.IV,
Coimbatore.
- 3.Inspector of Police,
C.C.I.W. CID,
Coimbatore Rural,
Coimbatore.
- 4.The Superintendent,
Central Prison, Coimbatore.
- 5.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR., J.

rsi

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(2/2)