



Crl.R.C.(MD).No.984 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	20.12.2023
Pronounced On	:	19.01.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD). No.984 of 2023

and

Crl.M.P(MD).Nos.12712 and 12714 of 2023

J.Muthunayagam

... Petitioner/Accused No.1

Vs.

The Inspector of Police,
C.C.E. Police Station,
Madurai City.
In Crime No.41 of 2003.

... Respondent/Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records from the lower Courts and set aside the judgment of the Appellate Court passed in C.A.No.5 of 2020 on the file of the learned VI Additional Sessions Judge, Madurai, dated 26.07.2023 confirming the judgment in C.C.No.237 of 2004 on the file of the learned Judicial Magistrate No.I, Madurai, dated 10.12.2019 by allowing this revision.



WEB COPY



Crl.R.C.(MD).No.984 of 2023

For Petitioner : Mr.S.Sivakumar
For Respondent : Mr.M.Muthumanikkam,
Government Advocate(Crl.Side)

ORDER

The petitioner is the first accused in C.C.No.237 of 2004 on the file of the learned Judicial Magistrate No.I, Madurai. The learned Judicial Magistrate No.I, Madurai, passed the conviction against him under Sections 409 and 477-A of IPC. He was convicted for the offence under Section 409 of IPC and sentenced to undergo three years simple imprisonment and to pay a fine of Rs.1,000/- in default to undergo one month simple imprisonment, for the offence under Section 477-A, sentenced to undergo three years simple imprisonment. The said conviction and sentence of imprisonment was confirmed in Crl.A.No.5 of 2020 on the file of the VI Additional Sessions Judge, Madurai. Challenging the said concurrent finding, he filed this revision.

2.According to the prosecution, the first accused/Petitioner was working as a Special Grade Superintendent, Aavin, Madurai. The second accused was working as cashier in the said office. According to the prosecution, both conspired together and misappropriated the funds of Aavin from 02.11.2003 to 14.11.2003 and misappropriated the amount of Rs.1,35,108/-. Hence, the P.W.



Crl.R.C.(MD).No.984 of 2023

1/Aavin Manager filed a complaint against A1 and A2. On the basis of the complaint, the respondent Police registered a case in Crime No.41 of 2023 for the offence under Sections 120-B, 409 and 477(A) of IPC.

3.The investigating agency conducted the detail investigation and filed the final report before the learned Judicial Magistrate No.I, Madurai. The learned Judicial Magistrate has taken on file in C.C.No.237 of 2004. He issued a summons to the accused. After his appearance, he served the 207 Cr.P.C. Documents. After that, learned trial Judge framed the necessary charges and questioned the accused. He denied the charges and pleaded not guilty. He stood for trial.

4.The prosecution proved the case by examining the witnesses P.W.1 to P.W.12 and marking Ex.P1 to Ex.P9. The learned trial judge after recording the above evidence, questioned the first accused under Section 313 (1) Cr.P.C. The same was denied by the accused as false. On the side of the accused no witness was examined and no document produced.



Crl.R.C.(MD).No.984 of 2023

5.The learned trial Judge after considering the above evidence and documents, convicted the petitioner and imposed sentence of imprisonment as stated above. Challenging the same, he preferred the appeal before the VI Additional Sessions Judge, Madurai, in C.A.5 of 2020. The same was also confirmed.

6.The learned counsel appearing for the petitioner assailed the concurrent finding of the Courts below on the three aspects:

(i)The investigating agency filed the final report without obtaining the sanction under Section 197 Cr.P.C.

(ii)The prosecution has not proved the entrustment with the petitioner to the amount of Rs. 1,35,108/-.

(iii) The prosecution failed to mark one of the inspection report on which the case was registered and hence there is an infringement of the petitioner's fundamental right of fair trial enshrined in the Article 21 of the Constitution of India.

7.The learned counsel appearing for the petitioner further submitted that according to the prosecution, two inspections were conducted. One inspection report alone was marked. Another inspection report was not marked. Without



Crl.R.C.(MD).No.984 of 2023

collection of the said report filing of the final report and conduct of trial is illegal. He further submitted that the entrustment was not proved and misappropriation was also not proved in manner known to law. He further submitted that the petitioner is aged about 76 years and in any event, he is entitled for the reduction of the sentence.

8.Per contra, the learned Additional Public Prosecutor (Crl.Side) appearing for the respondent supported the judgment of the Court below and submitted that the prosecution proved the case of misappropriation through the evidence of P.W. 6 and Ex.P3 and Ex.P4. The petitioner committed offence under Section 409, 477A of IPC and hence, sanction under Section 197 of Cr.P.C., is not necessary. He also placed reliance of the following judgments of the Hon'ble Supreme Court reported in *1999 (5) SCC 690* in the case of *State of Kerala Vs. Padmanabhan Nair*, *1983 3 SCC 429* in the case of *Manoharnath Kaul vs. State of Jammu & Kashmir*, *2012 11 SCC 252* in the case of *Omkumar Bhankar vs. State of Haryana & another*, *1997 5 SCC 326* in the case of *Shamboonath Misra vs. State of U.P and others* and *2021 8 SCC 768* in the case of *Indradevi vs. State of Rajasthan & another*. He further submitted that once entrustment was proved, it is the duty of the public servant to explain and



Crl.R.C.(MD).No.984 of 2023

disprove the prosecution case of misappropriation. He also submitted that two inspection conducted by the Officers and both reports disclosed the misappropriation committed by the petitioner and the other accused. One of the persons died and hence the prosecution did not file the said report but the available report disclosed the offence and the same was properly investigated by the respondent police and the evidence of P.W.6 adduced and the same was properly appreciated by the Court below and there is no reason to interfere with the concurrent finding recorded by the both the Courts below. Even though the petitioner is aged about 76 years, his plea of reduction of sentence deserves to be rejected on the ground that he committed misappropriation of the fund and he has not even taken steps to remit the amount. In the said circumstances, he seeks for dismissal of the revision.

9.This Court considered the rival submission and also perused the records including the impugned order and also the precedents relied upon by both the parties.

10.According to the prosecution, A1 was Superintendent and A2 was cashier in the Aavin Branch, Madurai. The duty of A1 and A2 are that they



Crl.R.C.(MD).No.984 of 2023

should receive the collected amount from the various agents and make entry in the cash book and make the consequential accounts in the proper accounts book that is after receiving the amount, first they have to make entry in the cash book Ex.P3. After that, they should make the entry in the account book in Ex.P4. According to the prosecution, even though they received amount from the various agents, without making entry in the case book and corresponding entry in the account book, they swindled the amount of Rs.1,35,108/-.

11.P.W.1 and P.W.2 conducted inspections and found that there was misappropriation and falsification of the documents. Hence, they instructed one Gopalakrishnan, and P.W.6,7, 8 and 10 to conduct the inspection. They conducted inspection and filed the report. The said Gopalakrishnan died during the trial. Hence, one of the report was not filed. In the said circumstances, non production of the one of the report is not fatal, when the law enforcing authorities has already taken the cognizance of the offence on the basis of the written information furnished by the P.W.1.

12.Further, the report is only written information to the respondent police to investigate the offence of misappropriation and falsification of the account.



Crl.R.C.(MD).No.984 of 2023

The investigating agency conducted the investigation and filed the final report with proper documents and oral evidence. They also proved the same, through the examination of the oral evidence and the documents. The petitioner never pleaded any prejudice caused to him on the account of the non production of one of the reports and this Court also finds no prejudice on account of non production of the said report, when the prosecution proved the case on the basis of the unimpeachable evidence of P.W.6 and Ex.P3 and Ex.P4.

13. in this case, the P.W.6 was servant working under A1. His duty is collecting money from the customers and to entrust to A1 namely the petitioner. He specifically deposed that on 04.11.2003 he deposited Rs.85,575/-. The said amount was not found place in the cash book/Ex.P3 and false account under Ex.P4 were prepared by A1 with the connivance of A2. Further, the said evidence of P.W.6 is not challenged by way of cross examination. In the said circumstances, the prosecution proved beyond reasonable doubt that the entrustment was proved on the basis of the Exs.P3 and P4 and evidence of P.W.6. As per the law laid down by the Honourable Supreme Court, once entrustment is proved, it is the duty of the public servant to explain that there was no misappropriation by accounting the same. In this aspect, it is relevant to extract



Crl.R.C.(MD).No.984 of 2023

the following portion of the judgment of the Honourable Supreme Court in the case of ***N. Bhargavan Pillai v. State of Kerala, (2004) 13 SCC 217***

13. It is fairly well-settled position in law that actual mode of entrustment or misappropriation is not to be proved by the prosecution. Once entrustment is proved, it is for the accused to prove as to how the property entrusted was dealt with.

14. The contention of the petitioner is that the filing of the final report without obtaining sanction under Section 197 Cr.P.C is fatal. The said submission of the learned counsel for the petitioner deserves to be rejected on the ground that the petitioner committed offence under Section 409 and 477 A of IPC. The Honourable Supreme Court in number of Judgments explained the requirement of 197 Cr.P.C. relating to the offence under Sections 409 and 477 A of IPC and held that committing offence of misappropriation and falsification of the records does not amount to discharge of duty. The relevant portion of the judgment is as follows:

Shambhoo Nath Misra v. State of U.P., (1997) 5 SCC 326

4.... However, performance of official duty under colour of public authority cannot be camouflaged to commit crime. Public duty may provide him an opportunity to commit crime.



Crl.R.C.(MD).No.984 of 2023

5. The question is when the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund etc. can he be said to have acted in discharge of his official duties. It is not the official duty of the public servant to fabricate the false records and misappropriate the public funds etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public fund etc. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of the same transaction, as was believed by the learned Judge. Under these circumstances, we are of the opinion that the view expressed by the High Court as well as by the trial court on the question of sanction is clearly illegal and cannot be sustained.

State of Kerala v. V. Padmanabhan Nair, (1999) 5 SCC 690

8.... When this Court held that in regard to the offence under Section 409 of IPC read with Section 120-B it is no part of the duty of the public servant to enter into a criminal conspiracy for committing breach of trust, we find no sense in stating that if the offence is under Section 406 read with Section 120-B IPC it would make all the difference vis-à-vis Section 197 of the Code.

Om Kumar Dhankar v. State of Haryana, (2012) 11 SCC



Crl.R.C.(MD).No.984 of 2023

252

WEB COPY

13...This Court thus held that the offence of cheating under Section 420 or for that matter offences relatable to Sections 467, 468, 471 and 120-B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty.

15. In this case, the first accused namely petitioner has not furnished any explanation during the 313 of Cr.P.C., questioning also. Apart from that, no contra evidence was produced that there was no entrustment. In the said circumstances, the prosecution clearly proved that the case of entrustment and the falsification of the records. Therefore, the finding of the both the Courts below that the prosecution has proved the case beyond reasonable doubt under Sections 409, 477(A) is confirmed. This Court finds no perversity in the said finding of the both the Courts below and also the petitioner's counsel did not point out any material and circumstances to show the perversity in the findings of the Courts below. In the said circumstances, this Court is unable to accept the contention of the petitioner that the prosecution failed to prove the offence under Sections 409 and 477 (A) of IPC. In view of the above finding, conviction passed by the Court below is confirmed.



Crl.R.C.(MD).No.984 of 2023

WEB COPY

16.The petitioner is aged about 72 years. He also deposited the misappropriated fund at the time granting anticipatory bail. Even though the petitioner prolonged the trial from 2004 to 2019, in view of the age of the petitioner and his suffering from various health problem, this Court is inclined to reduce the sentence from three years to one year.

17. In view of the above, this Criminal Revision Petition is partly allowed. Consequently, the connected miscellaneous petitions are closed.

19.01.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
VSG



Crl.R.C.(MD).No.984 of 2023

WEB COPY

- To
- 1.The learned VI Additional Sessions Judge,
Madurai.
 - 2.The learned Judicial Magistrate No.I,
Madurai.
 - 3.The Inspector of Police,
C.C.E. Police Station,
Madurai City.
 4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
 5. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.



WEB COPY



Crl.R.C.(MD).No.984 of 2023

K.K.RAMAKRISHNAN, J.

VSG

Pre-delivery Order made in

CrI.R.C(MD). No.984 of 2023

and

CrI.M.P(MD).Nos.12712 and 12714 of 2023

19.01.2024