



Crl.RC .No.1578 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.1578 of 2023

and

Crl.M.P.No.14572 of 2023

Anburasan

.... Petitioner

Vs

State : The Inspector of Police,
Commercial Crime Investigation Department,
Namakkal.
Crime No.2 of 2001.

.... Respondent

Prayer: Criminal Revision is filed under Section 397 r/w Section 401 of Criminal Procedure Code, praying to set aside the Judgment dated 28.06.2023 in Crl.A.No.80 of 2010 on the file of the I Additional District and Sessions Judge, Namakkal by confirming the Judgment passed in C.C.No.15 of 2004 on the file of the Judicial Magistrate No.II, Namakkal dated 09.07.2010 by appreciating the above facts and circumstances of the case and allowing this petition.

For Petitioner : Mr.R.Marudhachalmurthy

For Respondent : Mr.A.Gopinath
Government Advocate (Crl.Side)

ORDER



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This Criminal Revision has been filed as against the Judgment

dated 28.06.2023 passed in Crl.A.No.80 of 2010 on the file of the I Additional District and Sessions Judge, Namakkal, thereby confirming the order dated 09.07.2010 passed in C.C.No.15 of 2004 on the file of the Judicial Magistrate No.II, Namakkal, for the offence punishable under Section 408 of IPC.

2. The case of the prosecution is that the first accused, while serving as a Managing Director and second accused, while serving as a President of Kolli Hills Co-operative Society, during the period from 01.08.1998 to 03.04.1999, misappropriated funds belonging to the Society, which was entrusted to them for purchasing seasonal crops in Kolli Hills. The first accused had committed criminal breach of trust and dishonestly misappropriated a sum of of Rs.5,000/- to the Society, which was allotted for the purchase of honey. The second accused, on 06.04.1999, misappropriated a sum of Rs.4,886/-, which was meant for purchasing mustard. Further, on 03.04.1999, the third accused had misappropriated to the tune of Rs.19,000/-, which was intended for the procurement of various other items.



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3. Based on the complaint, the respondent registered an FIR in Crime No.2 of 2011 for the offence punishable under Section 408 of IPC. After completion of the investigation, a final report was filed and the same was taken cognizance by the Trial Court in C.C.No.15 of 2004.

4. On the side of the prosecution, P.Ws. 1 to 6 were examined and Exs. P1 to P19 were marked. On the side of the accused, no witnesses were examined and no documents were marked. On perusal of the oral and documentary evidence, the Trial Court found all the accused guilty of the offence punishable under Section 408 of IPC and sentenced each of them to undergo simple imprisonment for a period of six months and also imposed a fine of Rs.1,000/- each, in default, to undergo simple imprisonment for a further period of one month. Aggrieved by the same, the first and second accused preferred separate appeals. The Appellate Court, by Judgment dated 28.06.2023, dismissed both the appeals and confirmed the order of conviction and sentence imposed by the Trial Court. Aggrieved by the same, the present revision case has been filed by A1.

5. The learned counsel appearing for the petitioner would submit



that an enquiry was conducted under Section 89-A of the Tamil Nadu Co-operative Societies Act by one P.A.Ramasamy. However, P.W.1 deposed that one Shangmugam, P.A.Ramasamy and P.Rajarathinam were appointed as enquiry officers. This contradiction is fatal to the case of the prosecution. Further, there was no investigation conducted in a routine manner and no action was taken by the Society. That apart, there were material contradictions between the statement recorded under Section 161(3) of Cr.P.C and the deposition made during trial. However, the Trial Court, without considering the same, convicted the petitioner and the same was confirmed by the Appellate Court.

6. A perusal of the deposition reveals that the first accused was an Administrative Committee Member, the second accused was a President of the Society and the third accused was a Chemical Analyst of the Society. As per by-laws of the Society, they were not authorized to disburse cash for purchase of agricultural produce. However, the advance voucher marked as Ex.P11 indicates that the case was disbursed in violation of the by-laws. Though amounts were received under various invoices, no corresponding produce was procured. As far as the first accused is concerned, the amount, which was



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misappropriated by him, was received for purchase of honey. Insofar of the second accused is concerned, he has misappropriated the amount, which was received for purchase of mustard. Due to misappropriation, an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act was ordered. P.W.4 was appointed as the Enquiry Officer, who conducted a detailed enquiry and submitted his report, which was marked as Ex.P9. Based on the enquiry report, a complaint was lodged before the respondent and FIR was registered. The vouchers under which the accused received the amount were marked as Exs.P.11 and P12. Thus, the prosecution categorically proved the charge under Section 408 of IPC as against the petitioner herein. Therefore, the Trial Court rightly convicted the petitioner and the Appellate Court rightly confirmed the same.

7. In view of the above, this Court is not inclined to interfere with the conviction imposed concurrently by the Trial Court as well as the Appellate Court. However, considering the nature of the allegations and also the age of the petitioner, this Court is inclined to modify the sentence. Accordingly, the sentence is modified to the effect that the period of imprisonment already undergone by the petitioner and to pay a fine of Rs.11,000/-. The petitioner



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shall pay the remaining fine amount of Rs.10,000/-, after deducting the amount which was already deposited, directly to the Society within a period of two weeks from the date of receipt of a copy of this order and produce the acknowledgement of such payment before the respondent. Failing which, the order of modification in respect of the sentence shall stand automatically cancelled and the original sentence imposed by the Trial Court and confirmed by the Appellate Court shall stand restored. The respondent is directed to secure the petitioner to undergo the remaining period of sentence forthwith.

8. In the result, this Criminal Revision Case is partly allowed.

Consequently, connected miscellaneous petition is closed.

25.06.2025

Index : Yes/No

Internet : Yes/No

Speaking/Non Speaking order

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To

1. The I Additional District and Sessions Judge,
Namakkal

2. The Judicial Magistrate No.II,
Namakkal.

3. The Inspector of Police,



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Commercial Crime Investigation Department,
Namakkal.

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4. The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN. J,



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