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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03-03-2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No. 537 of 2017

Duraisamy .. Appellant

Versus

P. Shanmugham .. Respondent

Criminal Appeal filed under Section 378 of the Code of Criminal Procedure against the judgment dated 14.02.2017 passed in C.C. No. 87 of 2009 on the file of the Judicial Magistrate No.III, Cuddalore.

For Appellant	..	Mr. E. Ashok for Mr. R. Gururaj
For Respondent	..	Mr. C.S. Dhanasekaran

JUDGMENT

This Criminal Appeal had been filed under Section 378 of the Code of Criminal Procedure against the judgment dated 14.02.2017 passed in C.C. No. 87 of 2009 on the file of the learned Judicial Magistrate-III, Cuddalore.

2. The Appellant in this Appeal is the Complainant in C.C. No. 87 of 2009 in which it was contended that the Complainant, Accused and some others have started a firm in the name and style of Seven Hills Cotton

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Industries Private Limited during the year 1989. The said firm was also registered before the Registrar of Companies on 03.01.1989 under Registration No. 18-16693/1989. The said firm was started for production of cotton from waste cotton and sale thereof. Even though several persons served as Directors of the firm, at the time of alleged occurrence, the Complainant and the Accused alone were carrying on the business as Directors. It is stated that the Complainant had 45% of shares and the Accused had 55% of shares in the firm. According to the Complainant, in order to secure pecuniary gain, the Accused had indulged in embezzlement of funds by altering the statement of accounts to suit his convenience. The Complainant also referred to the fictitious supplies made by the Accused to several persons under fictitious transaction by raising fictitious bills. It is in this fashion, the Complainant alleges that the Accused had indulged in misappropriation of Rs.3,42,067/-. The Accused, while continuing as a Director in the firm, had started a new Company in the name and style of Sri Cotton Industries at Vallalar Nagar, Vadalur and diverted the cotton produced in the firm to his own firm. It is alleged by the Complainant that a joint account has been maintained in the bank in the name of Seven Hills Cotton Industries and the cheque has to be signed both by the Complainant as well as the Accused. It is alleged that four cheques have been signed by the Accused who also forged the signature of the Complainant, and had withdrawn a sum of Rs.46,810/-. When the Complainant

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questioned the Accused, he gave evasive reply. The Complainant therefore gave a complaint to the Vadalur Police Station against the Accused, but no action was taken. Therefore, the Complainant had filed the private complaint before the learned Judicial Magistrate No.III, Cuddalore praying to direct the Court to initiate action against the Accused for having committed the offences punishable under Sections 406, 409, 420, 467, 468, 471 and 477A of the Indian Penal Code.

3. The learned Judicial Magistrate No.III, Cuddalore, had taken the complaint on file and directed the Inspector of Police, Vadalur Police Station to cause an enquiry into the complaint given by the Complainant and to submit a report. Accordingly, a report dated 31.08.2004 was filed holding that the averments made in the complaint are false. The Complainant submitted his protest petition to the report dated 31.08.2004 and prayed to issue appropriate direction to the Police authorities to register a First Information Report on the basis of his complaint. In the light of the protest petition filed by the Complainant, evidence was taken by the learned Magistrate. The Complainant examined himself as P.W-1 and the Accountant of the firm was examined as P.W-2 and marked 16 documents as Ex.P-1 to Ex.P-16. On behalf of the Accused, no witness was examined, however, Ex.D-1 to Ex.D-13 were marked through P.W-1 during cross-examination. The learned Judicial Magistrate-III,

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Cuddalore, upon considering the oral and documentary evidence concluded that the deposition of P.W-1 as well as P.W-2 is not sufficient to hold the Accused guilty of the charges. The learned Judicial Magistrate specifically held that there is nothing to show that the Accused indulged in fabrication of bills or vouchers. It was also pointed out that even though it is alleged that the Accused had established a fake firm in the name of Srinivasa Traders and diverted the supplies to the said Company, no documents were produced to substantiate the same. Therefore, the learned Trial Judge concluded that the offences alleged against the Accused under Sections 468, 463 or 420 of IPC are not made out and accordingly, dismissed the complaint filed by the Complainant by an order dated 14.02.2017. Challenging the same, the present Criminal Appeal is filed.

4. Mr. E.Ashok, learned Counsel for Mr.R. Guru Raj, learned Counsel for the Appellant submitted that the Appellant and the Respondent are Directors of the firm by name Seven Hills Cotton Industries (P) Ltd., at No.4, SIDCO Industrial Estate, Vadalur, Cuddalore – 607 303. There were other Directors also but they resigned from the Directorship of the Company and during the relevant period, there were only two Directors in the Company viz., the Complainant and the Accused. The Company was involved in cleaning the stained cotton and yarn used by the industries and then supplied to various

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industries. When the Complainant concentrated on manufacturing process, the Accused as Director of the Company was dealing with sales and accounts. Taking advantage of the situation, the Accused as Director of the Company had raised fabricated receipts for the claim that he had sold cotton and cleaning threads to the industries but in fact, he had not supplied any cotton items to the so-called industries, but only created false claim on behalf of the Company with various organisations. Ex.P-4 is one such bill raised by the Accused as though cotton yarn waste was sold, for which the Company issued bill dated 24.05.2002 for Rs.49,174/- to the Southern Railways. Another bill was for Rs.93,409/- which was marked as Ex.P-6 during trial. It was for the supply of 8738 kilograms of waste cotton from the Railways. Also, the Accused raised bill for Rs.49,580/- for cotton yarn waste from Southern Railways. As per Ex.P-4, the Accused alleged to have raised bill for Rs.53,450/- for supply of cotton yarn waste to Southern Railways. That apart, the Accused raised Bill for Rs.97,600/- against Southern Railways, Chennai. In order to establish the above, the Complainant obtained reply through Right to Information Act by filing petitions with Authorities for furnishing information regarding the bills raised by the Accused and accordingly he received reply to the effect that the Accused had not at all sent any material to raise such claim. It is the claim of the Appellant/Complainant that misusing the position as Director of the Company, the Accused issued bills against various Organisations and collected

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amounts in his name, thereby caused loss to the Company. The Complaint was filed by the Complainant alleging misappropriation of the amount of the Company. The Complainant had made out a case for Breach of Trust by the Accused towards the other Director viz., the Complainant.

5. The learned Counsel for the Appellant submitted that as per the documents marked as Ex.P-1 to Ex.P-16, the Accused is running a parallel Proprietorship firm, dealing with the same materials viz., purchase and supply of cotton yarn under the name and style of Srinivasa Traders, Palli Agraharam, Thanjavur – 613 003. As per Ex.P-4, there were 5 bills for cotton yarn waste quantity of 5000 kgs and amount paid was Rs.53,430/-. The Appellant herein had invoked Right to Information Act seeking information regarding sole Proprietorship of P.M.S. Shanmuga Graha Lakshmi Rice Mills. The Appellant had also obtained information under Right to Information Act regarding Srinivasa Traders Palli Agraharam. The Respondent had used Srinivasa Traders for supply and receipt of bills, he had received money from various organisations like BHEL, Southern Railways, Chennai, Southern Railways, Trichy etc. After hearing the learned Counsel for the Complainant and the learned Counsel for the Accused, the learned Judicial Magistrate-III, Cuddalore, framed charges for the offence under Section 406, 409, 420, 467, 468, 471 and 477 of I.P.C. Since Accused denied charges and claimed to be

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tried, trial in the private complaint was ordered.

6. The learned Counsel for the Appellant submitted that the judgment of acquittal dated 14.02.2017 passed by the learned Judicial Magistrate-III, Cuddalore, is erroneous as it had not properly appreciated the documentary evidence filed by the Complainant. The documents filed by the Complainant clearly establishes breach of trust which was not considered by the learned Judicial Magistrate-III, Cuddalore, and had mechanically dismissed the private complaint.

7. By way of reply, Mr. C.S. Dhanasekaran, the learned Counsel for the Respondent/Accused submitted that the claim of the Complainant will not hold good. Section 406 deals with punishment for breach of trust. Section 468 deals with punishment for fabrication of documents. While framing the charges, the Court had taken cognisance of offences under Sections 406, 468 and 471 of IPC. On proper appreciation of evidence, the learned Judicial Magistrate-III, Cuddalore, dismissed the Complaint. The learned Counsel for the Respondent invited the attention of this Court to the reported decisions of the Honourable Supreme Court in the case of ***Velji Raghavji Patel v. The State of Maharashtra*** reported in ***AIR 1965 Supreme Court 1433*** and in the case of ***V.Sejappa v. State by Police Inspector Lokayukta, Chitradurga*** reported in

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AIR 2016 Supreme Court 2045, particularly in paragraph 21, where it is held as follows:

> *"21. If the evaluation of the the evidence and the findings recorded by the trial Court does not suffer from any illegality or perversity and the grounds on which the trial Court has based its conclusion are reasonable and plausible, the high Court should not disturb the order of acquittal if another view is possible. Merely because the Appellate Court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial Court is a possible view. In state through Inspector of Police, A.P v. K. Narasimhachary (2005) 8 SCC 364, this Court reiterated the well-settled principle that if two views are possible, the Appellate court should not interfere with the acquittal by the lower Court and that only where the material on records lead to an inescapable conclusion of guilt of the Accused, the judgment of acquittal by the lower court and that only where the material on records leads to an inescapable conclusion of guilt of the Accused, the judgment of acquittal will call for interference by the appellate Court. The same view was reiterated in T.Subramanian v. State of Tamil Nadu. (2006) 1 SCC 401."*

8. The learned Counsel for the Respondent also submitted that both the Accused as well as the Complainant are Directors of the Company. A Director of the Company has vast powers under The Companies Act and both are custodians of the properties of the Company. For alleged misappropriation of funds, the Complainant ought to have moved the Companies Tribunal or Civil Court but instead, he had moved the Criminal Court and thereby approached the wrong Forum. The Complainant did not take note of the fact that the accounts of the firm had been periodically subjected to reconciliation through P.W-2. It is not as if the accounts had not been audited or subjected to

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scrutiny. The loss, if any caused to the company, will have to borne by both the Complainant and the Accused equally. While so, invoking the Criminal Forum by filing the Private Complaint is not maintainable. The learned Judicial Magistrate-III, Cuddalore, by proper appreciation of the documentary evidence, dismissed the private complaint and it does not call for any interference by this Court.

9. The learned Counsel for the Respondent also submitted that upon plain reading of Section 406 I.P.C., it is obvious that before a person can be said to have committed criminal breach of trust, it must be established that he was either entrusted with or entrusted with dominion over property which he is said to have converted to his own use or disposed of in violation of any direction of law etc. Every partner has dominion over property by reason of the fact that he is a Partner/Director of the firm. This is a kind of dominion which every owner of property has over his property. But it is not dominion of this kind which satisfies the requirements of Section 405 of IPC. In order to establish "entrustment of dominion" over property to an Accused person, mere existence of that person's dominion over property is not enough. It must be further shown that his dominion was the result of entrustment. The Complainant must establish that dominion over the assets or a particular asset of the partnership was, by a special agreement between the parties, entrusted to

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the Accused person. If in the absence of such a special agreement a partner receives money belonging to the partnership, he cannot be said to have received it in a fiduciary capacity or in other words cannot be said to have been "entrusted" with dominion over partnership properties. The learned Counsel for the Respondent relied on the decision of the Honourable Supreme Court in ***Velji Raghavaji Patel vs. The State of Maharashtra*** reported in ***AIR 1965 Supreme Court 1433.*** Also the learned Counsel for the Respondent invited the attention of the Court to the admissions made by the Complainant as P.W-1 in the witness box regarding suggestion of the learned Counsel for the Respondent/Accused during cross examination that he had not called for details regarding the supply of cotton yarn. The learned Counsel appearing for the Respondent submitted that the order of dismissal of private complaint is well reasoned and therefore he prayed for dismissal of this Appeal.

Point for consideration:

Whether the Judgment dated 14.02.2017 passed in C.C.No.87 of 2009 on the file of the learned Judicial Magistrate-III, Cuddalore, is to be set aside as perverse?

10. Heard the learned Counsel for the Appellant as well as the Respondent. Perused the materials placed on record and the judgment dated

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14.02.2017 passed in C.C.No.87 of 2009 on the file of the Judicial Magistrate No.III, Cuddalore.

11. On perusal, it is found that before the learned Judicial Magistrate-III, Cuddalore, the Complainant examined himself as P.W-1 and the documents were marked as Ex.P-1 to Ex.P-16. The Auditor by name Iyappan was examined as P.W-2 in support of the claim of the Complainant. After completion of evidence of the Complainant, the Accused was examined under Section 313 of Code of Criminal Procedure. The Accused had not let in evidence but only marked documents under Ex.D-1 to Ex.D-13. The documents relied by the Accused was marked during the cross examination of the Complainant as P.W-1. Ex.D-1 is the closure report dated 31.08.2004, closing the complaint given on behalf of the Complainant. Ex.D-2 is the closure report filed on 30.03.2007 by the Cuddalore Police Station before the learned Judicial Magistrate-III. Ex.D-3 is the order passed by the Company Law Tribunal, Chennai Bench, dated 24.06.2010. Ex.D-4 is the order passed by the same Redressal Forum, Chennai dated 28.07.2012. Ex.D-5 is the response letter dated 21.02.2006 received from the headquarters of Southern Railways. Ex.D-6 is the details of the bills received from Southern Railways, Chennai. Ex.D-7 is the letter from the Vadalur Indian Overseas Bank Branch to the Cuddalore Crime Branch, Deputy Superintendent of Police. Ex.D-8 is the

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letter received from the Indian Overseas Bank, Vadalur Branch addressed to the Deputy Superintendent of Police, Cuddalore Crime Branch. Ex.D-9 is the letter received from the Southern Railways under the Right to Information Act. Ex.D-10 is the letter received from the Railways Stores regarding claim and settlement of wages. Ex.D-11 is the letter dated 21.02.2006 from Railways to Cuddalore Central Crime Branch. Ex.D-12 is the letter issued from the Southern Railway regarding supply of cotton yarn. Ex.D-13 is the letter from the Vadalur Indian Overseas Branch to the Complainant Seven Hills Cotton Industries (P) Ltd. After conclusion of trial, on appreciation of evidence, learned Judicial Magistrate-III, Cuddalore, by judgment dated 14.02.2017 dismissed the private complaint.

12. On perusal of the complaint, it is found that the Complainant had filed the complaint seeking prosecution of the Accused whereas when he had deposed evidence and marked Ex.P-1 to Ex.P-16. In the cross examination, he had clearly admitted that he had not verified the Organizations concerned, Southern Railways, BHEL, Trichy regarding the supply of materials by the Accused. Also, he had admitted that he had not furnished the assets and liabilities of the partnership firm preceding the filing of the complaint with the seal of the Auditor concerned. The learned Judicial Magistrate-III had properly analyzed the evidence and stated that P.W-2 who claims to be an Auditor but

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his evidence cannot be considered as he is not the duly appointed Auditor of the Seven Hills Cotton Industries (P) Ltd. Therefore, the evidence of P.W-2 was not accepted by the learned Judicial Magistrate-III and had accordingly dismissed the complaint.

13. The observation by the learned Judicial Magistrate-III citing the reported decisions of the Honourable Supreme Court in paragraphs 12 and 13 and on assessment of evidence, rejected the private complaint of the Complainant. The reasoning by the learned Judicial Magistrate-III, Cuddalore, is found acceptable and reasonable in the facts and circumstances of the case. When the Complainant had approached this Court seeking to convict the Accused, he is duty bound to prove the allegations beyond reasonable doubt. He had not done so. Apart from that, between Directors of a Company, both Directors have equal rights and duties towards the assets and liabilities of the Company. Therefore, one of the Directors alleging misappropriation against another is not proper. The Complainant failed to prove the same by furnishing proper documents. The documents he had obtained under Right to Information Act will not help the Complainant to convict the Accused for the alleged offence. As stated by the learned Counsel for the Respondent, the facts and circumstances of the case involving Directors of the Company are different

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from the allegations stated in the complaint. If at all the Complainant has any grievance, he is within his right to approach the Civil Court for rendition of accounts and for dissolution of the firm. In short, a Civil case had been converted into criminal case. Therefore, the dismissal of the private complaint by the learned Judicial Magistrate-III, Cuddalore, in C.C.No.87 of 2009, dated 14.02.2017 is found proper. It does not warrant any interference by this Court.

14. In the light of the above discussion, the point for consideration is answered in favour of the Respondent/Accused and against the Complainant/Appellant. The judgment dated 14.02.2017 passed in C.C. No. 87 of 2009 by the learned Judicial Magistrate No.III, Cuddalore, is found proper which does not call for any interference by this Court.

In the result, **the Criminal Appeal is dismissed.** The judgment dated 14.02.2017 passed in C.C. No. 87 of 2009 on the file of the Judicial Magistrate No.III, Cuddalore is confirmed.

03-03-2025

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Index: Yes/No
Internet: Yes/No
Speaking Order/Non-speaking Order

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1. Judicial Magistrate-III,
   Cuddalore.

2. The Section Officer,
   Criminal Section,
   High Court of Madras.

SATHI KUMAR SUKUMARA KURUP, J

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Judgment in
Crl.A.No.537 of 2017

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03-03-2025

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