



CrI.A.No.334 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 07.04.2025

Judgment Delivered on : 25.04.2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.A.No.334 of 2023

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Sivaraj, S/o Aruchamy Gounder

.. Appellant

Vs.

1. M.Paulmani, S/o Muthusamy Gounder

2. R.Lakshmi, W/o Ramasamy

.. Respondents

Criminal Appeal filed under Section 378 of the Code of Criminal Procedure against the judgment of acquittal dated 31.10.2017 passed in C.C.No.254 of 2010 on the file of the Judicial Magistrate No.II, Tiruppur.

For appellant : Mr.M.Mohideen Pitchai

For respondents : Mr.C.Vigneshwaran, Legal Aid Counsel

JUDGMENT

This Criminal Appeal is filed against the judgment of acquittal dated 31.10.2017 passed in C.C.No.254 of 2010 on the file of the Judicial Magistrate No.II, Tiruppur.

2. The appellant has filed complaint against the respondents before the

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Judicial Magistrate No.2, Tiruppur, for the offences under Sections 403, 406, 409, 417, 420 and 468 IPC. The learned Magistrate has taken cognizance of the complaint in C.C.No.254 of 2010. In the said C.C., the respondents/accused have filed CrI.O.P.No.19572 of 2016 before this Court to quash the said C.C. This Court, by order dated 04.11.2016, quashed the complaint for the charge under Section 411 IPC alone and the accused faced the trial for the offences under Sections 409 read with Section 109 IPC also. Subsequently, the learned Magistrate, after trial, dismissed the complaint filed by the appellant herein and acquitted the respondents and therefore, the complainant has filed the present appeal.

3. Learned counsel for the appellant/complainant submitted that A1 and A2 being the son and daughter of the paternal aunt of the appellant, are very close relatives and that one of the main reason given by the trial Court for acquitting the respondents/accused, which is error apparent on the face of record is that, even when the appellant filed a complaint before the Police and since they have failed to take the case on file, the appellant filed the complaint before the Magistrate invoking Section 156(3) Cr.P.C. Though the Police had closed the case, against which, the appellant has filed a protest petition and in the meanwhile, the appellant also filed a complaint under Section 200 Cr.P.C.

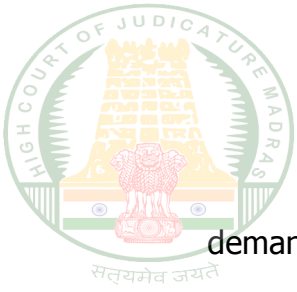
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and the same was taken on file in C.C.No.254 of 2010. Despite the complainant has established his case, the trial Court erroneously held that P.W.1 was not able to estimate the exact amount of appropriation, as records were not available with him and he was not able to state the amount during his evidence, after going through the Bank statement and the sale deed in the name of the respondents and their relatives. The learned Magistrate failed to note the evidence on record. The appellant was not having any working knowledge in running the garment factory and that the first respondent being already experienced in the field of working as Manager in another firm, was entrusted with the complete management of the firm by authorising him to sign the cheque in the accounts of the firm with the Punjab National Bank, Tiruppur and that all the registers regarding the business and financial transactions, were maintained by the first respondent alone. The trial Court has wrongly placed the burden upon the appellant, who was managing the labour side of the factory to produce the Account Register which were under his control. The Account Statement in Ex.P-2 itself is enough for proving the case of criminal breach of trust against the first respondent. The complainant cannot be found fault with for not taking the aid of Section 91 Cr.P.C. for non-production of the account books. When the respondents did not come forward to settle the accounts, after stopping of the production in 2004, and they kept all such office files with them, inspite of early

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demand made by the appellant. The trial Court has committed grave error in observing that no document was prepared with regard to the outstanding and also the income of both movable and immovable properties and the list of properties allotted to each partners. The trial Court has completely ignored the evidence of the complainant during cross-examination that the fine was orally dissolved and the division of movable and immovable properties were discussed and the entire assets were retained by the first respondent.

4. Learned counsel for the appellant further contended that the trial Court has committed grave error in quoting the evidence of P.W.2 regarding Rs.2,50,00,000/-. When it is not the case of the respondents that they have discharged all the debts, the trial Court has made wrong observations about the settlement of the accounts as stated in the FIR. The trial Court has failed to note that the complainant has clearly stated during the cross-examination on the side of the respondents that all the accounts are with the first respondent and hence, they were not produced. Therefore, since the appellant was not in the custody of any of the documents, and since the first respondent alone is managing the factory and also maintaining the accounts, had misappropriated the money, and therefore, the trial Court has shifted the burden on the accused, is not sustainable.

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5. Further, the respondents have accepted the maintenance of the accounts and also withdrawal of the money and the transactions. However, the trial Court erroneously held that the funds of the Company were withdrawn to the knowledge of the appellant and also mere signing of the Income Tax Returns as a partner, cannot be taken as proof of knowledge of the entire financial transactions carried out by the first respondent as a mandate holder and it is for him to produce the records kept by him to prove that all the amounts were drawn by him through self-cheque. The first respondent failed to adduce any evidence to show that the funds were withdrawn for the bona-fide purpose of the firm. When once the respondents have admitted that they have withdrawn the amounts, it is the duty of the first respondent to prove that the same was withdrawn for the purpose of the interest of the firm only. The first respondent has failed to establish the same. Unfortunately, the trial Court failed to consider the same and shifted the burden on the appellant and that the appellant has failed to establish the same.

6. The trial Court failed to consider the oral and documentary evidence, especially P.Ws.1 and 2. Further, P.Ws.1 and 2 and P.W.4 also have clearly established that the respondents have committed the charged offences and the

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trial Court failed to consider the chief examination of the witnesses and only took the pick and choose method from the cross-examination here and there and pointed out the same for dismissing the complaint and acquitted the respondents.

7. When once the respondents have admitted and participated in the management and they have also participated in the day-to-day affairs of the firm and they have failed to adduce any rebuttal evidence to prove that the funds for the purchase were made from his own resources, the trial Court erroneously had drawn an inference in favour of the respondents. Therefore, despite the appellant has set the law in motion, by filing the complaint and in order to substantiate the claim, on the side of the complainant, four witnesses were examined and 25 documents were marked. On the side of the respondents, no oral evidence was let in and 11 documents were marked as Exs.D-1 to D-11. Despite the appellant's having established their case and proving the charges, the trial Court erroneously held that the appellant has not proved his case beyond all reasonable doubts. Therefore, the complaint filed by the appellant was dismissed and the respondents have been acquitted of the charges and hence, the appellant/complainant is before this Court.

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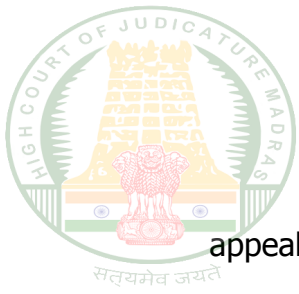
8. Learned counsel for the respondents/accused submitted that the appellant has not proved the charges levelled against the respondents/accused beyond all reasonable doubts. The transactions between the appellant and the respondents were only business transactions which are civil in nature and the appellants have failed to establish that the respondents have committed the charged offences. The trial Court rightly held that the appellants have not proved the case beyond all reasonable doubts. The de-facto complainant is the victim and since the complaint filed by her was dismissed, she has got every right to file appeal and the learned counsel placed reliance on the following judgments:

- (i) 2016 SCC OnLine Madras 16417 = 2016 (3) RCR (Cri) 896 (S.Ganapathy Vs. N.Senthilvel);
- (ii) 2020 (4) CTC 1 (Full Bench) (K.Rajalingam Vs. R.Suganthalakshmi),
and
- (iii) 2019 (2) SCC 752 (Mallikarjun Kodagali Vs. State of Karnataka).

9. When a Magistrate has acquitted the accused in a case based on a private complaint, the complainant can file a appeal against such acquittal only before the High Court under Section 378(4) Cr.P.C.

10. The learned counsel for the respondents further submitted that the

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appeal against acquittal will only lie before the Sessions Judge and here the appellant is not the victim which falls under Section 2(w) of Cr.P.C. However, the appeal against acquittal is not maintainable before this Court.

11. Heard both sides and perused the materials available on record.

12. The specific case of the complainant as per the averments made in the complaint is as follows:

(a) The complainant and A2 were partners of M/s.Sree Lakshmi Agencies, a partnership firm at A.P.T.Road, Karuvampalayam, Tirupur Town and the partnership deed was reduced into writing. The partners hold each 50% share in the Company. The partnership firm was engaged in manufacturing banian garments and the same was running under the authorised person, being the first accused, who is the brother of A2 from the year 1996. The complainant and the accused are close relatives. The complainant was looking after production and internal management of the Company under the control and management of A1, who was having control of finance and holding Bank Account and into operation.

(b) The complainant and A2 authorised A1 to manage the Bank Account bearing No.31277 in Punjab National Bank, Tirupur, but not authorised to transfer or shift the company funds.

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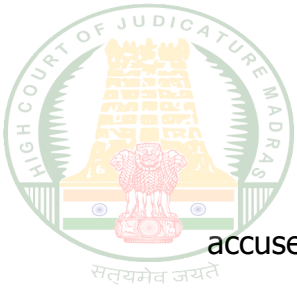
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(c) The partnership firm received huge profit that the complainant believed A1, who acted like a well-wishers of the firm. The complainant had said that his intention to start the new business separately and requested to divide the Company's share equally and return to his share, but A2 had been acting on behalf of A1 and refused to return his share. Then only, the complainant had come to know the mala-fide intention of the accused when they refused.

(d) After closing the Company business, A1 had acted with mala-fide intention and collected the outstanding payment of the firm and the same was transferred to his Account through the Bank and also withdrew the amount. The same has been revealed clearly in the account statement, dated 01.10.2004 to 15.05.2007, which is produced as Document No.3. From the year 1999, A1 had purchased lot of immovable properties from the funds of the firm as listed in the documents in his own name and in the name of A2 and in his parents' name and A2's husband's name and cheated the complainant who trusted A1. Even after his fraudulent activities came into light and the complainant requested to return his share, but there was no reply from the accused with the intention to cheat the complainant.

(e) The complainant got doubt against the activities by A1 and A2 on perusal of the account statement and the fraudulent activities by the accused came to light. The companies account statement is under the hands of the

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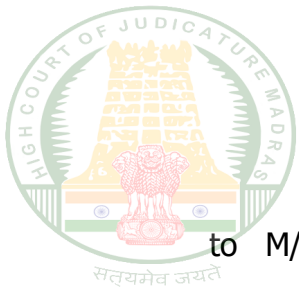
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accused. The complainant has immediately issued a notice on 15.05.2007 to the Bank Officer to cancel the power given to A1 immediately after the knowledge of A1 and A2's attitude. But the accused had already transferred all the money to his personal account and to the other company account without the knowledge of the complainant. The same has been revealed clearly in the account statement dated 02.09.2000 to 28.08.2004. The complainant has preferred to file a suit to claim his share in the partnership firm and immovable properties. The accused has illegally transferred the wealth of the partnership firm to his personal company.

(f) Earlier, A1 was working in Dhanam Export as Supervisor and then started export company in the name of M.P.M. Export. Hence, A1 had no source of such a huge amount to purchase lot of immovable properties as mentioned in his name and his parents' name within a short period. A1 had withdrawn huge amount from the complainant's partnership firm's Bank account at the time of each registration, which reveals clearly in the account statement. The partners had authorised A1 only to maintain the Bank accounts and the external management, but he has misused his power and colluded with A2 and transferred all the company's profit to his account, which is illegal and amounts to criminal intimidation, cheating and misappropriation of money.

(g) The accused had transferred all the funds from Sree Lakshmi Agencies

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to M/s.M.P.M. Exports and cheated and manipulated the accounts and subsequently, a compromise was held, but no remedy was obtained. A complaint was lodged before the Superintendent of Police on 09.04.2008 and before Tirupur South Police Station in receipt No.238/2008. But no action was taken.

(h) The complainant had filed petition before the Judicial Magistrate No.2 Court to seek a direction to the Police officials to register the FIR against the accused and to investigate and file a report, and the same was produced before the South Police Station, Tirupur and the FIR was registered under Sections 403, 406, 409, 417, 420 and 468 IPC, but no further enquiry was conducted according to law and it was closed one sided by colluding with the accused and stated as the offence is a civil nature abruptly.

(i) On the date of filing of FIR and on further dates, the complainant had regularly attended the enquiries to file the charge-sheet, but the Police official had not shown any interest and all efforts went in vain and finally, on 02.04.2009 submitted complaint before the Deputy Superintendent of Police, Tiruppur and copy to Superintendent of Police and the same was received by them. But the South Police has pasted the RCS Notice on 09.04.2009 in the compound wall without serving the same, which is illegal and one-sided. The South Police who submitted the RCS is being suspicious to the complainant and categorically suspected that the South Police who submitted the RCS report, had gone hand



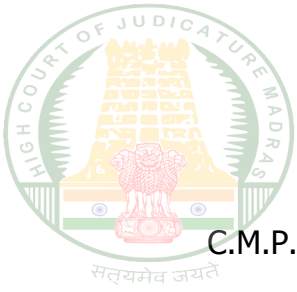
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in-glove with the accused and favoured them without conducting enquiry. Hence, the complainant has immediately filed his objection before the Court and reserved his right to file the complaint. The complainant has also sought for documents before the Police official through right to information and received a copy of final investigation report.

(j) The Police officials have gone hand-in-glove with the accused and colluded and suppressed all facts before the Court of Law. The complainant took steps before the Superintendent of Police through letter dated 02.04.2009, but even after this stage, the officials had not obtained statement from the complainant, but they had prepared false statement in the name of the complainant without his knowledge and put forged signature and filed false statement. The other witness who were examined by Police officials are all under the hands of the accused and now they have been working in A1-Company, namely M.P.M.Exports. The fourth witness was working in Sree Lakshmi Agencies and also at the same time, he was working in M.P.M.Exports as an Auditor. Hence, the accused will have to be secured and given false statement which was made arranged by the accused with the help of the Police officials. The Police officials have not properly investigated the case and wantonly had closed it as civil in nature to save the accused from the offences.

(k) Aggrieved by the Police action, the complainant filed petition in

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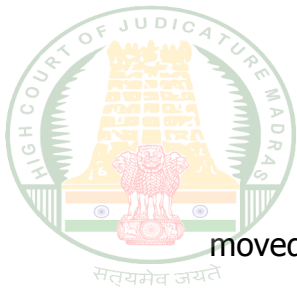
C.M.P.No.12299 of 2009 before this Court seeking direction for investigation by

CB-CID and to take action against the accused. This Court had directed to file an application before the trial Court and hence, the complainant has no other option, but to file the present complaint against the accused for his criminal cheating, misappropriation of money and fraud committed with ill-motive. Hence, the complainant requested to take the complaint on file for the offences committed under Sections 403, 406, 409, 417, 420 and 468 IPC by the accused and summon the accused before the Court of Law, enquire the accused and he may be punished according to law and in the interest of justice and prayed that compensation may be awarded to the complainant accordingly to the misappropriation of funds by the accused.

13. In order to substantiate the above said allegations, on the side of the prosecution, 4 witnesses were examined as P.Ws.1 to 4 and 25 documents were marked as Exs.P-1 to P-25.

14. The complainant was examined as P.W.1 and the Accountant of the firm was examined as P.W.2. On a reading of the evidence of P.Ws.1 and 2, especially the cross-examination, it clearly shows that though initially complaint was filed for the offences under Sections 409, 424 and 411 IPC, the respondents

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moved this Court for quashing the complaint and this Court had only quashed the charge under Section 411 IPC alone and directed the accused to face trial for the remaining offences under Sections 409 and 424 IPC. For better understanding, it is helpful to extract Sections 409 and 424 IPC, as follows:

Section 409 IPC: Criminal breach of trust by public servant, or by banker, merchant or agent: Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 424 IPC:- Dishonest or fraudulent removal or concealment of property

Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

15. On a reading of the evidence of P.W.1, it is seen that he has admitted that he came to know about the alleged transaction of withdrawing the funds in the year 2004 itself, whereas, he kept quiet for long time, for which he has

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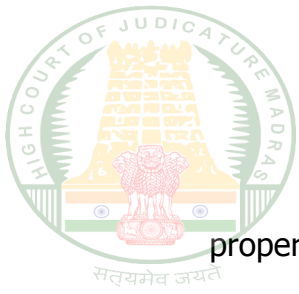
stated that taking the relationship between the parties, he has not acted immediately, but the reasons stated by the appellant are not acceptable.

16. Though the delay itself is not a ground to reject the case of the appellant/complainant, but the delay in not initiating action against the respondents, has not satisfactorily been explained. There are two partners in the firm and only one of the partners is the complainant alone, who has preferred the complaint and the other partner had not been impleaded in the complain, which also creates a doubt.

17. Further, P.W.1 admitted during chief examination that both the respondents/accused have jointly first withdrawn the money, whereas, except P.W.1 and Exs.P-2 to P.4, there is nothing about the involvement of the second respondent.

18. The charges framed against the second respondent for the offence under Section 409 read with 109 IPC and the materials show that the ingredients of Section 109 IPC are not made out, whereas, as far as the offence under Section 409 IPC is concerned, the prosecution must prove the entrustment of the

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property, within the domain or power with it. The prosecution must also prove that there was dishonest misappropriation or dishonest use or dishonest disposal.

Therefore, for the main entries in the Bank statement Ex.P-2, the entrustment of Bank transaction itself is not sufficient and it is the duty of the appellant/complainant to establish that the respondents/accused have misappropriated the funds of the firm by producing the accounts and statement of accounts and the relevant records/register.

19. P.W.1 himself has admitted in his cross-examination that the Accounts Registers were maintained for the firm. When they admitted that the firm has maintained the Register, it is the duty of the appellant/complainant to produce those records. Without producing the relevant records, it is not sufficient to prove the charge against the respondents/accused.

20. Since the first respondent was allowed to withdraw the funds and he had also entered into the business transaction, which does not amount to breach of trust, unless the appellant has established that the respondents have misappropriated the funds, the evidence of P.Ws.2 to 4 are not sufficient to corroborate the same with the evidence of P.W.1.

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21. It is settled proposition of law that, in a criminal case, the prosecution has to prove its case against the accused beyond all reasonable doubts. In this case, the appellant/complainant has filed the complaint under Section 200 Cr.P.C., and therefore, the complainant has to establish his case beyond all reasonable doubts.

22. It is also settled proposition of law that, in an appeal against acquittal, there is double presumption. Unless the charges are proved, the accused are presumed to be "innocent". In an appeal against acquittal, already, the trial Court has extended the "benefit of doubt" to the accused and declared the accused as innocent and in the appeal against acquittal, the respondents/accused are having double presumption and therefore, it is for the appellant to prove the charges against the respondents/accused beyond all reasonable doubts and the appellate Court cannot interfere with the judgment of acquittal, unless the appreciation of evidence by the trial Court is perverse and when the two views are possible, the view in favour of the accused has to be taken into consideration. The appellate Court must only, from the materials, form an opinion that only one view would have the prosecution to prove its case beyond all reasonable doubts and the finding of the appellate Court is erroneous.

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23. When the appellate Court feels that there are two views, normally, the appellate Court will not interfere with the finding of the trial Court regarding acquittal. Therefore, in this case, on a reading of the complaint preferred by the appellant, and also the material evidence and oral and documentary evidence produced by the appellant and as the appellate Court is a final Court of fact finding, this Court finds that the appellant/complainant has not proved his case beyond all reasonable doubts.

24. Therefore, this Court also extends the "benefit of doubt" in favour of the respondents/accused. This Court does not find any compelling reasons to interfere with the impugned judgment of the trial Court. This Court also does not find any merit in the present appeal, which is liable to be dismissed. Accordingly, this appeal is dismissed.

25.04.2025

Index: Yes/no

Speaking Order: Yes/no

NCC: Yes/no

CS

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To

1. The Judicial Magistrate-II, Tirupur.
2. The Public Prosecutor, High Court, Madras.

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P.VELMURUGAN, J

CS

Pre-delivery judgment
in CrI.A.No.334 of 2023

Judgment delivered on
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