

(2009) 07 MAD CK 0139
In the Madras High Court
Case No : Criminal R.C. No. 80 of 2006

Namakkal Agricultural Co-operative Marketing Society Ltd.	APPELLANT
Vs	
C. Mathiyalagan and State	RESPONDENT

Date of Decision : 08-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 401
Evidence Act, 1872 — Section 105, 106
Penal Code, 1860 (IPC) — Section 408, 477A

Citation : (2009) 07 MAD CK 0139

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : M.S. Palaniswamy, for the Appellant; Hasan Md. Jinnah, Assistant Public Prosecutor for R2, for the Respondent

Judgement

G. Rajasuria, J.—Animadverting upon the judgement dated 29.3.2005 passed by the Additional District Sessions Judge (Fast Track Court)

No. 3, Namakkal, in CrI.A.No.5 of 2005, reversing the judgement dated 10.1.2005 passed by the Judicial Magistrate No. I, Namakkal, in C.C.

No. 349 of 2001, this criminal revision case is focussed.

2. The long and short of the relevant facts absolutely necessary and germane for the disposal of this criminal revision case would run thus:

(a) The police laid the police report in terms of Section 173 of Cr.P.C. as against the accused for the offence under Sections 408 and 477-A of

I.P.C. Since the accused pleaded not guilty, the trial was conducted.

(b) During trial, on the side of the prosecution as many as five witnesses were examined as P.W.1 to P.W.5 and Exs.P1 to P9 were marked. On

the accused's side no oral or documentary evidence was adduced.

(c) Ultimately, the trial Court recorded the conviction and imposed the following sentences:

Case No. Offence Punishment

C.C. No. 349 of 2001 Section 408 IPC Two years rigorous
imprisonment and fine
of Rs. 500/-, in
default, one month
rigorous imprisonment

Section 477-A IPC Two years rigorous
imprisonment

(d) Being aggrieved by and dissatisfied with the judgement of the trial Court, the appeal C.A. No. 5 of 2005 was filed before the Additional

District Sessions Judge, Namakkal(Fast Track Court No. 3), which court set aside the judgement of the trial Court and acquitted the accused.

3. Challenging and impugning the judgement of the first appellate Court, this revision is focussed by the Secretary of the Namakkal Agricultural

Co-operative Marketing Society Ltd., on the following grounds, the pith and marrow of them would run thus:

The first appellate Court, without any valid reasons, simply reversed the judgement passed by the trial Court, finding the accused guilty and

imposed the sentence. The exhibits marked on the prosecution side are so clinching and the prosecution clearly proved that the accused

misappropriated the stock worth Rs. 84,531/-. Accordingly, the revision petitioner prays for setting aside the judgement of the appellate Court and

restoring the judgement of the trial Court.

4. Heard both sides. Despite printing the name of the Counsel for the accused/R1, no one represented him. The accused/first respondent is also absent.

5. The learned Counsel for the revision petitioner would submit that the revision

petitioner being the Secretary of the Namakkal Agricultural Co-operative Marketing Society is interested in protecting the properties of the Society and also its interest. Hence, in that capacity, he filed the revision. He also reiterated the grounds of revision and prayed for setting aside the order of the appellate Court and for passing necessary orders.

6. The learned Additional Public Prosecutor also, by inviting the attention of this Court to various parts of the judgement of the appellate Court, would agree with the submissions made by the learned Counsel for the revision petitioner that the first appellate Court should not have, in such a superficial manner, dealt with the matter and reversed the reasoned judgement of the trial Court.

7. The point for consideration is as to whether there is any perversity or non-application of law on the part of the first appellate Court in deciding the appeal.

8. It is trite proposition that an appellate Court, which being the last Court of facts, is expected to address itself to the main points for consideration, for which it has to read the judgement of the lower Court and in the event of disagreeing with the views of the trial Court, it should state reasons and whereupon only it could disagree and set aside the judgement of the lower Court.

9. In this case, the plain reading of the judgement of the first appellate Court would demonstrate and display that the appellate Court was very much carried away by the simple fact that the entire misappropriated sum of Rs. 84,531/- was paid back by the accused. Having that in mind, the appellate Court, in fact, searched for some reason to acquit the accused and picked up one reason as though the lock of the said Co-operative Marketing Society was broken up by the inspecting officials and they conducted physical verification of the stock and arrived at the conclusion etc.

The Sessions Judge has not referred to the deposition of the witnesses as well as the documents. Ex.P5 is the letter written by the accused himself to the Managing Director of the Co-operative Society, admitting his guilt and over and above that he also, vide Ex.P9-the receipt dated 24.2.2001, deposited the misappropriated amounts with the Society. Hence, the appellate Court has not taken into account the significance of

Ex.P5 and also the depositions of P.Ws.1 to 5 and P.W.6-the I.O.

10. The cumulative effect of the prosecution witnesses is to the effect that the Collector was in receipt of some complaint from the public that malpractice was going on in the said Co-operative Marketing Society, whereupon the inspection was conducted by P.W.1 and his officials. Since the Co-operative Society, at the relevant time, was found closed, the revision petitioner herein was sent for and the Society was opened; stock was taken and the deficit was noted. In fact, it is the case of the prosecution that the revision petitioner secured the presence of the accused also at the time of inspection.

11. In matters of this nature, Section 105 as well as Section 106 of the Indian Evidence Act would come into play. An accused cannot simply deny his liability and that too, in the wake of he having admitted his guilt under Ex.P5 and also paid the amount as revealed by Ex.P9-the receipt. The first appellate Court, instead of analysing the evidence as well as the judgement of the lower Court, simply, in its judgement at paragraph No. 7, in a perfunctory and perverse manner, held as though the prosecution has not proved the case. Absolutely there is no shard or shred, miniscule or scintilla, molecular or iota extent of discussion as to why he has not believed the depositions of P.Ws.1 to 6 and also Ex.P5.

12. At this juncture, my mind his reminiscent and redolent of the following decisions of the Honourable Apex Court:

(i) 2002 Scc (CrI) 1448 - Bindeshwari Prasad Singh alias B.P .Singh and Ors. v. State of Bihar (now Jharkhand) and Anr.; an excerpt from it would run thus:

13. The instant case is not one where any such illegality was committed by the trial court. In the absence of any legal infirmity either in the procedure or in the conduct of the trial, there was no justification for the High Court to interfere in exercise of its revisional jurisdiction. It has repeatedly been held that the High Court should not reappreciate the evidence to reach a finding different from the trial court. In the absence of manifest illegality resulting in grave miscarriage of justice, exercise of revisional jurisdiction in such cases is not warranted.

14. We are, therefore, satisfied that the High Court was not justified in interfering with the order of acquittal in exercise of its revisional jurisdiction at the instance of the informant. It may be that the High Court on appreciation of

the evidence on record may reach a conclusion different from that of the trial court. But that by itself is no justification for exercise of revisional jurisdiction u/s 401 of the Code of Criminal Procedure against a judgment of acquittal. We cannot say that the judgment of the trial court in the instant case was perverse. No defect of procedure has been pointed out. There was also no improper acceptance or rejection of evidence nor was there any defect of procedure or illegality in the conduct of the trial vitiating the trial itself.

(ii) 2005 Scc (Cri) 276 *Sathyajit Banerjee and Ors. v. State of W.B. and Ors.*, an excerpt from it would run thus:

22. The cases cited by the learned Counsel show the settled legal position that the revisional jurisdiction, at the instance of the complainant, has to be exercised by the High Court only in very exceptional cases where the High Court finds defect of procedure or manifest error of law resulting in flagrant miscarriage of justice.

13. A bare perusal of those decisions would exemplify and demonstrate that the High Court, while exercising its revisional jurisdiction is not expected to interfere with the finding of fact arrived at by both the Courts below simply because one other view is possible or a different view could be taken.

14. It is a fit case, wherein interference by the High Court is required, as the judgement of the first appellate Court is grossly perverse, as discussed supra. Accordingly, the judgement of the first appellate Court is set aside and the matter is remitted back to the first appellate Court for passing reasoned judgement, after hearing both sides, in accordance with law. The learned Sessions Judge is expected to complete this exercise within a period of three months from the date of receipt of copy of this order and report compliance.

The criminal revision case is ordered accordingly.