

(2009) 07 MAD CK 0347

In the Madras High Court

Case No : Criminal R.C. No. 558 of 2006

Periyaswamy

APPELLANT

Vs

Inspector of Police, CCIW CID/(R)

RESPONDENT

Date of Decision : 15-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 401

Penal Code, 1860 (IPC) — Section 109, 408, 467, 468, 471

Citation : (2009) 07 MAD CK 0347

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : P. Anbarasan, for the Appellant; R. Muniyapparaj, G.A. for R2, for the Respondent

Judgement

G. Rajasuria, J.—Challenging and impugning the judgement dated 24.5.2006 passed by the Additional District and Sessions Judge (FTC-2), Coimbatore, in C.A.No.119 of 2005 modifying the judgement dated 7.3.2005 passed by the Judicial Magistrate No. IV, Coimbatore, in C.C. No. 107 of 2001, this criminal revision case is focussed.

2. Broadly but briefly, narratively but precisely, the facts which are absolutely necessary and germane for the disposal of this criminal revision case would run thus:

The police laid the police report in terms of Section 173 of Cr.P.C. for the offence under Sections 408, 477(A) and 467 IPC as against A1 and for the offence under Sections 109 read with 408, 477(A) and 467 of IPC as against A2 to A6. Inasmuch as the accused pleaded not guilty, the trial was conducted.

(b) During trial, on the prosecution side P.W.1 to P.W.9 were examined, Exs.P1 to P37 were marked. On the accused's side, no oral or documentary evidence was adduced.

(c) Ultimately, the trial Court acquitted all other accused except A1 and recorded

the conviction and imposed the sentence as against the revision petitioner/A1 as under:

Case No.

Offence

Punishment

C.C.No.107 of 2001

Section 408 IPC

One year R.I. And fine of Rs. 5000/- in default, 9 months R.I.

Section 467(2 counts)

One year R.I. And fine of Rs.1000/-, in default 9 months R.I. Each(sentences to run concurrently for counts)

Section 468 IPC(2 counts)

One year R.I. And fine of Rs. 500/- each, in default 6 months R.I. Each (sentences to run concurrently for counts)

Section 471 IPC(2 counts)

One year R.I. And fine of Rs. 500/- each R.I., in default 6 months R.I. Each (sentence to run concurrently for the counts)

Section 477(A) IPC(7 counts)

One year R.I. and fine of Rs. 500/- each, in default, 6 months R.I. Each (sentence to run concurrently for counts)

(d) Being aggrieved by and disconcerted with the judgement of the lower Court, A1 preferred appeal in C.A.No.119 of 2005 before the Additional District and Sessions Judge, (FTC-2), Coimbatore, which Court confirmed the conviction as against him, but modified the sentence only to the extent of reducing the one year Rigorous imprisonment to three months rigorous imprisonment.

3. Animadverting upon the judgements of both the Courts below, this revision is filed by A1 on the ground that both the Courts below fell into error in appreciating the evidence and understanding the innocence of the accused. The lower Court failed to take into consideration the fact that all the amounts alleged to have been misappropriated by A1, were deposited in the respective accounts of the account holders. P.W.1 admitted that on one side of the form he signed, but he denied his signature on the other side. But that was not looked with suspicion by both the Courts below, as against P.W.1 and in favour of the accused. There is nothing to indicate that the accused forged the signatures of P.W.1, P.W.2, P.W.4 and P.W.5. Accordingly, the revision petitioner prays for setting aside the judgements of both the Courts below.

4. The point for consideration is as to whether there is any perversity or non-application of law in holding the revision petitioner/A1 guilty and also in imposing the sentences as above.

5. The learned Counsel for the revision petitioner would reiterate the grounds of revision and advance his argument to the effect that in the Surcharge proceedings, the Deputy Registrar closed the matter in toto and in the absence of clinching evidence, both the Courts below recorded the conviction and imposed the sentences as above. The Courts below failed to take into account Exs.C1 and C2-the vouchers.

6. Whereas, the learned Government Advocate would support the judgements of both the Courts below and contend that the accused, after perpetrating the offence, tried his level best to camouflage and conceal his offence by putting forth Ex.C1 and C2 falsely and there is nothing wrong in the judgements of the Courts below.

7. At this juncture, I would like to precisely and tersely set out the prosecution case, which is to the effect that during the period between 10.4.1998 and 31.8.1998 at West Neelambur Primary Agricultural Co-operative Bank, the revision petitioner herein along with other accused, committed misappropriation of the amounts of the members of the Bank to the tune of Rs. 2,96,690/- by forging their signatures.

8. The learned Counsel for the revision petitioner/A1 invited the attention of this Court to the order passed by the Deputy Registrar in the Surcharge proceedings and submitted that the Deputy Registrar himself closed the matter in toto.

9. I am at a loss to understand as to how such an argument could be countenanced for the reason that the accused himself stage managed to see that some of the account holders, whose monies were misappropriated by him, deposited in the Bank subsequently. In fact, the trial Court clearly pointed out that Ex.C1 and Ex.C2-the vouchers allegedly issued by Sellappa Gounder and Supplu Naicker were not produced before the Enquiry Officer and it was nothing but an after thought on the part of the accused in securing those documents and producing before the Court. I would like to agree with such a view because, if really Ex.C1 and Ex.C2 emerged at the relevant time and with that alone the said Sellappa Gounder and Supplu Naicker withdrew the sums of Rs. 45,000/- and 25,000/- respectively, from their own accounts, there would have been no rhyme or reason on their part in giving statement before the Enquiry Officer that they have not withdrawn those amounts. Even before the Court, Sellappa Gounder-P.W.5, during Chief examination clearly deposed that he did not withdraw from his account Rs. 45,000/-. However, artificially during cross-examination he would aver as though he remitted back that amount. It is not too difficult for this Court to understand that the accused himself stage managed everything relating to the mis-appropriation. Had really those amounts withdrawn were belonging to those account holders, there would not have been no necessity for them to redeposit

those amounts.

10. P.W.2 is the son of P.W.1-Ramasamy Gounder, who is the account holder and from his account a sum of Rs. 38,000/- and Rs. 15,000/- were misappropriated by A1 and the hand writing expert also would clearly speak to the effect that the purported signatures for withdrawal of the amount were not that of Ramaswamy-P.W.1. As such, It is clear that A1 misappropriated the amounts.

11. Regarding the quantum of misappropriation is concerned, the learned Counsel for the revision petitioner would invite the attention of this Court to the proceedings of the Deputy Registrar and point out that relating to the sum of Rs. 90,000/- and Rs. 23,690/-, they were some errors in accounting and no actual loss. Even considering it to be so, out of the total misappropriated sum of Rs. 2,96,690/-, deducting Rs. 1,13,690/-, there remains Rs. 1,83,000/-, which was misappropriated by A1. As such, viewing it from any angle, it is clear that A1 being the Secretary, who was responsible for managing the Bank cannot wriggle out of his liability. The appellate Court also gave a factual finding fixing liability on A1.

12. At this juncture, I would like to call up and recollect the following decisions of the Honourable Apex Court:

(i) 2002 Scc (Cr) 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 (Cr) 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. As such, I could see no perversity or non-application of law in appreciating the facts relating to the finding of guilty as against A1/revision petitioner.

15. Relating to the sentence is concerned, the learned Counsel for the revision petitioner would submit that already the revision petitioner/A1 underwent 66 days detention and the learned Government Advocate also would furnish the details as under:

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period 21.3.2000 to 25.4.2000 - at 36 days Central Prison, Coimbatore	
-----	As per
J.M.IV, Coimbatore 7.5.2006 to 24.5.2005 ? at 18 days conviction Central Prison, Coimbatore	
-----	As per
Fast Track Court, 7.5.2006 to 18.5.2006 at 12 days Coimbatore Central Prison, Coimbatore	
-----	Total 66
days -----	

16. I am of the opinion that in view of the fact that the loses were already recovered, imposing the said 66 days of incarceration underwent by A1, as sentence would meet the ends of justice and if the sentence of three months is upheld as such, for 24 days alone the revision petitioner/A1 may have to go to jail and that would demoralise him after this much lapse of time. Hence, I would like to reduce the six months rigorous imprisonment to 66 days simple imprisonment. Since the revision petitioner/A1 had already underwent the said sentence of 66 days, no more incarceration is required.

17. In the result, the criminal revision case is partly allowed and the rest of the findings and sentence imposed are confirmed.