

**(2006) 06 MAD CK 0279**

**In the Madras High Court**

**Case No : Criminal R.C. No. 231 of 2004**

Ponnuswamy

APPELLANT

Vs

Inspector of Police, C.C.I.W.

RESPONDENT

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**Date of Decision : 28-06-2006**

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 406, 408, 409, 467, 477A  
Probation of Offenders Act, 1958 — Section 4

**Citation : (2006) 06 MAD CK 0279**

**Hon'ble Judges : S. Ashok Kumar, J**

**Bench : Single Bench**

**Advocate : T.S. Gopalan, for the Appellant; N. Kumanan, Government Advocate, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

S. Ashok Kumar, J.—This revision is directed against the conviction of the petitioner for the alleged offences u/s 408 and 477(A) (3 counts)

I.P. C. sentencing him to undergo nine months rigorous imprisonment for each count and directed the sentence to run concurrently, which was

confirmed in appeal by the learned Additional District & Sessions Judge, Fast Track Court, Vellore.

2. The brief facts of the case are as follows:

The petitioner was working as an attender in the Marudhadu Primary Agricultural Co-operative Bank. When he was employed during 27.2.1987

to 31.12.1991, it was alleged that the accused misappropriated cash and stock to a total value of Rs. 21,050.10/- and prepared false records and

thus committed the offence as alleged.

3. On behalf of the prosecution, P.W.1 to P.W.14 were examined and Exhibits P.1

to P.32 were marked. On behalf of the accused, no witness was examined and no document was marked.

4. On a consideration of the oral and documentary evidence, the learned Judicial Magistrate No. II, Vellore convicted the petitioner to undergo rigorous imprisonment for nine months on each count for the offence under Sections 408 and 477A (3 counts) and to suffer the imprisonment concurrently.

5. The co-accused A.2 was acquitted in the trial. The petitioner preferred an appeal in Criminal Appeal No. 91 of 1999 before the learned Additional District & Sessions Judge, Fast Track Court, Vellore, who heard the appeal and dismissed the same, confirming the conviction and sentence. Hence, this revision.

6. Mr. V. Karthick, learned Counsel appearing for the petitioner would submit that though there are certain grounds to agitate for the acquittal of the accused, he is restraining his arguments to the sentence imposed on the petitioner on the ground that even assuming that there are misappropriations said to have been caused by the petitioner, the entire amount has been repaid by the petitioner even before the judgment was delivered by the trial Court.

7. He has produced documents to show that on 18.3.1993, the petitioner paid Rs. 7,770/-; on 7.4.1994 paid Rs. 7522/- and on 18.2.1998 paid Rs. 5754/-, totalling a sum of Rs. 21,046/-, but that judgment was delivered only on 14.9.1999. P.W.11 a clerk of the society would admit that because of the alleged misappropriation, there was no loss caused to the society because alleged loss has been made good by the petitioner.

8. The trial Court also at paragraph 33 of its judgment has confirmed that the petitioner has already repaid the entire amount.

9. Mr.V.Karthick, learned Counsel appearing for the petitioner pressed into service two judgments of this Court reported in 1990 L.W. Cri 172

K. Somasundaram v. State rep. by Inspector of Police and 2000 3 MWN (Cri) 133 Shanmugam and Ors. v. State of Tamil Nadu rep. by Inspector of Police, CCIW (CID).

10. In 1990 L.W. Cri 172, the learned brother Arunachalam J. has held as follows:

8. On facts, the entrustment having been established and the retention, which

was deemed to be dishonest in view of the production of Exhibits

P.18 to P.22, the guilt of the petitioner has to be taken to have been established, though only for an offence u/s 406, I.P.C. Learned counsel for

the petitioner fervently pleads that the provisions of the Probation of Offenders Act, Central Act XX of 1958, could be invoked in view of the

petitioner having made good the amount along with interest long before the lodging of the complaint. It appears that the petitioner as well as his

father were associated with this Co-operative Society for several years and the record had been clean. Unfortunately, the petitioner had involved

himself in the commission of this offence in 1975-76, 13 years have elapsed since the commission of the offence and the fact remains that the

Society has not lost anything, for, the entire amount plus interest has been paid by the petitioner to the society. The offence u/s 406 I.P.C. is

punishable with imprisonment which may extend to three years, or with fine, or with both. On the facts of this case, there will be no impediment in

invoking the provisions of the Probation of Offenders Act. Section 4 of the Probation of Offenders Act, Central Act XX of 1958, permits this

Court to release a person on probation of good conduct if the offence for which he is convicted is not punishable with death or imprisonment for

life and such a course is deemed expedient taking into consideration the nature of the offence and the character of the offender. I am satisfied that

the petitioner could be dealt with under the provisions of the Probation of Offenders Act.

9. In that view, while modifying the conviction imposed on the petitioner u/s 409 I.P.C. into one u/s 406, I.P.C., I set aside the sentence imposed

on him on the first charge and direct him to be released on his executing a bond, within eight weeks from today in a sum of Rs. 2,000/- with one

surety for a like sum to the satisfaction of the Sub-Divisional Judicial Magistrate, Tiruppur, to keep the peace and be of good behaviour for a

period of six months and to appear and receive sentence when called upon during such period. The convictions and sentences imposed on the

petitioner for offences u/s 467 and 477-A, I.P.C. are set aside and the petitioner is acquitted of those charges. The fine amounts, if paid by the

petitioner, shall be refunded to him. The Criminal Revision Case is partly allowed.

11. Following the judgment, the learned brother R.Balasubramanian, J. in (2000

(3) MWN (Cri) 133 as held as follows:

Inasmuch as the sum stated to have been misappropriated had been reimbursed by the revision petitioner/accused, I am of the opinion that interest

of justice would be met by letting off the convicted revision petitioner under the Probation of Offenders Act instead of sending him to prison. There

are precedents to this effect namely 1990 L.W. (Cri.) 172 : 1991 1 L.W. (Cri.) 355. Accordingly, while confirming the conviction of the revision

petitioner in CrI.R.C.935/96 on the lines indicted earlier, I am inclined to invoke the provision of the Probation of Offenders Act. Accordingly,

while modifying the conviction imposed on the revision petitioner in CrI.R.C.No. 935/96 on the lines indicted above. I set aside the sentence

imposed on him for the offences referred to earlier and direct him to be released on his executing a bond for a sum of Rs. 10,000/- with one surety

each for a likesum to the satisfaction of the learned Judicial Magistrate No. 1, Madurai within eight weeks from today; to keep peace and be of

good behaviour for a period of six months and to appear and receive the sentence when called for during the said period.

12. The facts and circumstances cited in the above two cases are almost similar to the facts of this case. Apart from the fact that the petitioner has

paid the entire amount said to have been misappropriated and he had already suffered 29 days at the pre-trial stage before he was enlarged on bail

by this Court.

13. In the above circumstances, the conviction of the petitioner is set aside and he is directed to be released u/s 4 of the Probation of Offenders

Act and he shall execute a bond within four weeks from today in a sum of Rs. 5,000/- with one surety for a like sum to the satisfaction of learned

Judicial Magistrate No. II, Vellore to keep the peace and be of good behaviour for a period of six months and to appear and receive sentence

when called upon during such period. The conviction and sentence imposed on the petitioner under Sections 408 and 477A (3 counts) are set

aside and the petitioner is acquitted of those charges.

Hence, this CrI.R.C. is allowed.