

(2007) 10 MAD CK 0100

In the Madras High Court

Case No : Criminal R.C. No. 923 of 2005

The Assistant Director, Department of Handloom and Textiles

APPELLANT

Vs

R.N. Chandrasekaran, M.N. Devendran, S. Murugesan and
State by Inspector of Police C.C.I.W.C.I.D. (R)

RESPONDENT

Date of Decision : 12-10-2007

Acts Referred:

Citation : (2007) 10 MAD CK 0100

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : N. Manokaran, for the Appellant; B. Sriramulu for K. Premkumar, for R1 to R3, R. Muniyappa Raj Govt. Advocate (Crl.side) for R4, for the Respondent

Final Decision : Allowed

Judgement

S. Tamilvanan, J.—This Criminal Revision has been preferred by the petitioner / defacto complainant against the order of acquittal, dated

04.02.2005 made in C.C.No. 68 of 2002 on the file of the Judicial Magistrate No. IV, Coimbatore.

2. It is not in dispute that the first respondent / A1, brother of A2 was the President of Mookanoor Sowdambikai Weavers Co-operative Society

during the relevant period between 01.04.1999 and 30.11.1999 and A3 is the close relative of A1 and A2. As per the prosecution case, A1 with

the connivance of A2 and A3 had committed criminal breach of trust by shifting finished goods of 6680 sarees at value of Rs. 27,22,789.20/- from

the Co-operative Society to proprietary concerns, namely, 1) Padmapriya & Co., and 2) Devandra & Co., to which A1 and his mother are

respectively the proprietor and proprietrix.

3. In order to establish the prosecution case, 15 witnesses were examined, apart

from marking Exs.P.1 to P.53, including the relevant records and the registers of the Co-operative Society before the trial court. On the side of the accused, D.W.1 was examined and Exs.D1 to D.10 were marked.

4. It is seen from Ex.P.11 marked as document before the trial court that on 19.02.2000, A1, the President of the Society has admitted the alleged

fact that he had shifted 6680 finished sarees from the Co-operative Society to Padmapriya & Co., run by him as proprietor and Devandra & Co.,

another sole trading business run by his mother. The letter reads that A1 has admitted the alleged fact in the presence of the Vice President and

other office bearers, Secretary and the Manger of the Society and as per the document, the aforesaid office bearers of the Society have attested

the letter typed in the letter pad, signed by A1 with the seal, President, Mookanoor Sowdambikai Weavers Co-operative Society Ltd. In order to

establish the prosecution case, the attesters to Ex.P.11 have been examined and they have deposed that A1 voluntarily executed the letter and

signed in the presence of the Vice President and other office bearers of the Co-operative Society, admitting the aforesaid fact that he had shifted

6680 sarees to the proprietary concerns, run by him and his mother.

5. According to Mr. N. Manokaran, learned Counsel appearing for the revision petitioner, the learned Judicial Magistrate, without considering the

evidence available on record, has passed a crippled order and thereby acquitted the respondents / accused, though the evidence available on

record would be sufficient to establish the commission of criminal breach of trust by the respondents / accused, whereby sarees worth about Rs.

27,22,789.20/- had been shifted by A1, the President of the Society with the help of the co-accused to the aforesaid proprietary concerns

belonged to him and his mother. The learned Counsel for the petitioner further submitted that A1 is not an illiterate, but he being a post-graduate

has voluntarily executed Ex.P.11 in the presence of the Vice President and other office bearers and that there is corroborative oral and

documentary evidence, but the same was not considered by the trial court. In support of his contention, learned Counsel for the petitioner cited the

following decisions:

1. Ayodhya v. Ram Sumer Singh AIR 1981 SCC 1415

2. M.M.B. Shivaprakkasam Vs. The Deputy Registrar of Co-operative Societies, The Special Officer, TANFED and The District Registrar, .

3. Ram Briksh Singh v. Ambika Yadav AIR 2004 SC 4583

6. It is seen from the judgment that the Judicial Magistrate has not given specific findings with regard to the direct oral and documentary evidence

available against the respondents, even there is no specific finding with regard to the material evidence available on record.

7. As contended by Mr. B. Sriramulu, learned senior counsel for the respondents 1 to 3, it is a settled proposition of law that in a revision against

acquittal, unless there is manifest error of law and perverse finding, leading to miscarriage of justice, this Court cannot interfere with the finding of

the trial court.

8. The Full Bench of the Hon"ble Supreme Court in Ayodhya Dube and Others Vs. Ram Sumer Singh, has clearly ruled that the order of the High

Court in revision directing retrial by setting aside order of acquittal would be justified, as the Sessions Judge had acquitted the accused by ignoring

the probative value of F.I.R and reliable testimony of eye witnesses, without considering the material evidence on record, but consisted of faulty

reasoning. The Hon"ble Supreme Court has further held as follows:

We agree with the view expressed by the High Court and we only wish to say that the Criminal Justice System does not admit of "pigeon-hling".

Life and the Law do not fall neatly into slots.

9. In the decision, Ram Briksh Singh v. Ambika Yadav reported in AIR 2004 SC 4583, the Hon"ble Apex Court held that certain material

evidence has been overlooked by trial court, while acquitting accused leading to manifest illegality and gross miscarriage of justice and hence, High

Court is empowered to set aside the order of acquittal in the exercise of revisional jurisdiction and order retrial.

10. I am of the considered view that the aforesaid decisions are directly applicable to the facts and circumstances of this case, since the trial court

has passed an order of acquittal by overlooking the material evidence that are available on record. In the decision Ram Briksh Singh v. Ambika

Yadav reported in AIR 2004 SC 4583 the Hon"ble Supreme Court has held as follows:

The overlooking of evidence in relation to these circumstances warrants the

remand of the case of trial Court for retrial which has been directed in terms of the impugned judgment.

11. In the light of various decisions of the Hon"ble Supreme Court, I am of the view that the impugned order of acquittal has been passed by the learned Judicial Magistrate, ignoring all the material evidence available on record.

12. However, considering the material evidence available on record and also the facts and circumstances of the case, I am of the view that no de novo trial is required in this case and to meet the ends of justice, it is needed to allow the revision and set aside the impugned order of the trial court, as the order of acquittal leads to manifest illegality and gross miscarriage of justice.

13. Mr. B. Sriramulu, learned Senior Counsel appearing for the respondents 1 to 3 raised his apprehension and contended that while dealing with the retrial, the trial court should not be influenced by the observation of this Court. I am of the view that the above contention is quite reasonable, since the trial court should decide the case independently uninfluenced by any observations made by this Court.

14. In the result, Criminal Revision is allowed and the impugned judgment of acquittal, dated 04.02.2005 passed by the trial court is set aside and the matter is remitted back to the trial court for fresh consideration of the oral and documentary evidence and directed to dispose the same according to law, in the light of the decision of the Hon"ble Apex Court referred above. The trial court is further directed to dispose the case, within six months from the date of receipt of the copy of this order.