State By Vs. Seetharaman

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Court : Chennai

Decided On : Mar-03-2015

Judge : M.Sathyanarayanan

Appellant : State By

Respondent : Seetharaman

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

03. 03.2015 CORAM THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN Criminal Appeal (MD). No.136 of 2005 State by Inspector of Police, C.C.I.W., C.I.D., Karur, P.S.Cr.No.9/95. .. Appellant/Petitioner vs. Seetharaman .. Respondent/Accused Appeal filed under Section 374 of Cr.P.C against the judgment dated 29.11.2004 in C.C.No.99 of 1999 on the file of the learned Judicial Magistrate No.2, Kulithalai and to set aside the same. !For appellant : Mrs.S.Prabha Government Advocate (Crl.Side) ^For respondent : Mr.S.Muthukrishnan :

JUDGMENT

The respondent State has filed this appeal, challenging the order of acquittal dated 29.11.2004, made in C.C.No.99 of 1999, by the Court of the Judicial Magistrate No.2, Kulithalai, Trichy District. The respondent herein was prosecuted for the commission of offences under Sections 408 and 477-A of I.P.C and after fullfledged trial, by the above said order, he was acquitted of all the charges.

2. The facts narrated in brief, which are necessary for disposal of this appeal are as follows: (i) It is the case of the prosecution that the respondent/accused was appointed as Typist in the services of Karur Co-operative Handlooms Export Project, Karur and got promotion as Senior Clerk and he was put in-charge of godown between 10.04.1989 to 03.06.1993 and as such, he was in-charge of the goods stored in the said godown. Duties also cast upon him to deduct the stocks, which are sent away from the godown and also include the stocks in the Stock Register as and when it is delivered to the godown, by maintaining proper documents and make entries in the relevant registers. Further, the respondent/accused, without adhering to the duties and responsibilities and in order to gain pecuniary and unfair advantage for his own benefit, has diverted the stocks and thereby caused loss to the above said concern to the tune of Rs.3,61,973.85 paise and hence, he is liable to be prosecuted for the commission of the offences under Sections 408 and 477-A of I.P.C.

3. A complaint for launching a criminal prosecution under Ex.P.7 was given by P.W.3, based on which, P.W.6 has registered a F.I.R under Ex.P.15 on 18.10.1995 at about 8.15 hours. P.W.6 conducted the investigation and examined 15 witnesses, including P.Ws.1 to 3 and recorded the statement of witnesses under Section 161(3) of Cr.P.C. As per the orders of the Superintendent of Police, C.C.I.W.,C.I.D., P.W.6 handed over the investigation to the Inspector of Police, C.C.I.W, C.I.D, Dindigul on 07.02.1992. P.W.7, on receipt of the case-diary from P.W.6, continued the investigation and found that P.W.6 has already recorded the statement of witnesses, which included P.Ws.1 to 3. On 28.03.1998, he re-examined P.W.4 and recorded his statement and handed over the investigation to Mr.Radhakrishnan, who after completion of investigation, has filed a final report charging the respondent/accused under Sections 408 and 477-A of I.P.C.

4. The Court of the learned Judicial Magistrate No.I, Kulithalai, on receipt of the charge-sheet, issued summons to the respondent/accused for his appearance and framed charges under Sections 408 and 477(A) of I.P.C and questioned him and he pleaded not guilty of the charges.

5. The prosecution, in order to prove their case, examined P.Ws.1 to 7 and marked exhibits P.1 to P.15. When the respondent/Accused was examined under Section 313 (i) (b) of Cr.P.C with regard to the incriminating circumstances made out against him, he denied it as false. The respondent/accused has also filed a written statement denying his complicity in the commission of the offences, for which he was charged. But, he did not let in any oral evidence and not marked any document.

6. The Trial Court, on consideration of oral and documentary evidence, has acquitted the respondent/accused vide impugned judgment and aggrieved by the same, the respondent/State has filed this Criminal Appeal.

7. Mrs.S.Prabha, learned Government Advocate (Crl.Side) has drawn the attention of the Court to the oral and documentary evidence, especially the testimony of witnesses P.Ws.4 and 5 coupled with Exs.P.8 to P.13 and would submit that the prosecution had proved its case beyond any reasonable doubt. The Trial Court was influenced by the fact that as per the duty roaster marked as Exs.P.9 and P.10, the respondent/accused was not in-charge of the godown at the relevant point of time and has overlooked the statements of the respondent/accused, marked as Ex.P.11, where, he has categorically admitted that he was in-charge of the godown at the relevant point of time and he was also liable to be answered with regard to the stock deficiency and the trial Court, also without proper appreciation of oral and documentary evidence, has erroneously acquitted the accused.

8. It is the further submission of the learned Government Advocate (Crl.Side) that the respondent/accused being a public servant was in a position of trust and confidence at the relevant point of time and he has failed to adhere to the duties and responsibilities and knowing pretty well the consequences of diverting the stock registers, he has done so and thereby caused loss to the Tamil Nadu Karur Co-operative Handlooms Society and hence, prays for reversing the order of acquittal and remanding the matter once again to the trial Court for denova trial.

9. Per contra, the learned counsel appearing for the respondent/accused made his submissions in Tamil and vehemently contended that the testimony of P.W.5, who

has submitted his report under Section 81 of the Tamil Nadu Co- operative Societies Act, has clearly revealed that he has not conducted proper enquiry, collected relevant documents and even as per Exs.P.9 and P.10, the Duty Roaster, the respondent/accused was not put in-charge of godown and he is only a Typist and the Trial Court, on over all appreciation of oral and documentary evidence, has rightly arrived at the conclusion to acquit the respondent/accused and this Court, in exercise of its revisional jurisdiction, may not re-appreciate the oral and documentary evidence and may not come to a different conclusion and prays for dismissal of this Criminal Appeal.

10. This Court has carefully considered the rival submissions made by the learned Government Advocate (Crl.Side), appearing for the appellant/State and the learned counsel appearing for the respondent/accused and also perused the oral and documentary evidence as well the original records.

11. (i) P.W.1, at the relevant point of time was the Assistant Director of Handlooms and Textiles and according to him, he has received the proceedings dated 19.09.1991 from the Director of Handlooms and Textiles to conduct enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act and subsequently, he has received a letter under Ex.P.2 from the Controller of Karur Co-operative Handlooms Export Production Project enclosing a copy of the stock deficit marked as Ex.P.3 and he has appointed one Periyasamy to conduct enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act and on his transfer, appointed one Krishnamoorthy to conduct the enquiry. (ii) P.W.2 was the Assistant Director of Handlooms and Textiles, Trichy and he speaks of P.W.5 as the Enquiry Officer to conduct enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act. (iii) P.W.3 is the defacto complainant and he speaks about the fact of lodging of the complaint under Ex.P.7, based on the enquiry report submitted by P.W.5. (iv) P.W.4, who was the Auditor at the relevant point of time, has spoken about the submission of Audit Reports and also about the stock deficit in the main godown as well as in the Karur Production Unit to the tune of Rs.29,531.20 paise and the said report was marked as Ex.P.8. (v) P.W.5, a star witness, examined on the side of the prosecution, has deposed that as per Ex.P.6 proceedings, he was appointed as an Enquiry Officer to conduct enquiry under Section 81 of the Tamil Nadu Co-

operative Societies Act and as per Ex.P.9, the Office proceedings dated 31.03.1985, the duties and responsibilities of the respondent/accused have been fixed and in which, apart from 203 other persons, the respondent/accused also signed under Ex.P.10 (Acceptance Sheet) in acceptance of his duties and responsibilities. He also deposed that the respondent/accused has voluntarily given his statement, marked as Ex.P.11 and he was entrusted with the responsibility of maintaining stocks in the main godown and he has to prepare the relevant registers and submit weekly report and monthly stock reports on or before 3rd of every month. After enquiry, he has submitted his report, marked as Ex.P.12.

vi)P.W.5, in his cross-examination would admit that in his enquiry, he has found that in respect of some of the items, there was stock deficiency and in respect of some of the items, more stocks were available. P.W.5, in his cross-examination would further depose that prices are fixed by the Senior Technical Assistant and invoices are prepared by the Clerks and he has not recorded the submissions of the Special Officer, Manager, Senior Technical Assistants and Assistants working in the Head Office and he also made a crucial admission that as per Ex.P.10, the respondent/accused was entrusted with the responsibility as a Typist only. As per the report submitted by P.W.5, though in respect of some of the items, there was stock deficit and in respect of some of the items, more stocks were available, he has not chosen to examine any one in respect of that and he would also admit that in the exhibition sales also, he has not enquired about how much was sold and how much stocks were diverted to the Head Office from the exhibition and it is also stated in the report that it may be possible, while the exhibition, there is bound to be deficiency in the stocks also. P.W.5 would further admit that he has not conducted enquiry as to the discharge of stocks from the Head Office and he has not verified the stocks available and a separate Office is functioning as to the receipt of sale particulars in respect of stocks. It is also admitted by P.W.5 that he did not enquire about the person, who is receiving the sales amount. He did not compare the sales register with the outgoing register and due to natural calamity, some stocks were sent to Andhra Pradesh from the Head Office of Karur Co-operative Textiles and he did not verify the same. P.W.5 made a crucial admission that for each society, stock verification is done once in three months and he did not verify the relevant report. P.W.5 further admitted that the voluntary statement was not given by the respondent/accused spontaneously. vii)P.W.6, who registered the F.I.R, conducted a part of the investigation and handed over the investigation to P.W.7. P.W.7, who conducted a part of the investigation, in his cross-examination, admits that he has not done any investigation with regard to availability of the stocks in the main godown.

12. The trial Court, on consideration of oral and documentary evidence, especially Exs.P.9 and P.10, coupled with the testimony of P.W.5, has found that the respondent/accused, as per the Duty Roaster was entrusted with the responsibility as a typist and no proceedings have been marked to that effect, though he was in-charge of the godown in the Head Office. The trial Court further found that as per Ex.P.9, Duty Roaster proceedings, typist is not having the responsibility of maintaining the material stocks and there is an official in the designation of Assistant (Finished Goods Section Assistant) for maintaining the stock sales and he was in-charge of the stocks and he was not examined and also not arrayed as an accused. The trial Court further found that relevant witnesses such as Managing Director, Manager, Senior Technical Assistant and the persons in-charge of the stock have not been examined and further found that as per the oral testimony of P.W.4- Auditor Nagarajan, there were increased number of stocks available in respect of some items and in some items, there was a deficit in stock. The trial Court has also considered the scope of Sections 408 and 477(A) of I.P.C, by placing reliance upon the judgments reported in 1.2000 (1) Law Weekly (Criminal) 135 2.1988 Criminal Law Journal Page 1027 (Dhulamani Behera Vs State of Orissa) 3.1978 Criminal Law Journal 292 4.1974 Supreme Court Cases (Cri) 120 (Dadarao Vs The State of Maharashtra) 5.1981 Supreme Court Cases (Cri) 616 (Janeshwar Das Aggarwal Vs State of Uttar Pradesh) 6.1973 Crl.L.J.975 (Hamendra Nath Biswas and Others Vs Mrinal Kanti Choudhury) 7.1999 Supreme Court Cases (Crl) 288, (Jiwan Dass Vs State of Haryana) and held that the prosecution has miserably failed to prove the ingredients of the offence under Sections 408 and 477-A of I.P.C. 13.This Court has carefully scanned the materials placed before it in the form of oral and documentary evidence. Though P.W.5 has submitted his report, after enquiry, under Ex.P.12, he has not scrutinized the relevant documents as well as stock Register and also examined the person in-charge as well as officials in the Head Office. As rightly contended

by the learned counsel appearing for the respondent/accused, Exs.P.9 and P.10, the Duty Roaster proceedings did not disclose that the respondent/accused is solely in-charge of the godown in the Head Office and as per the said documents, his designation was only a typist and as per the Duty assigned to the typist, he was not in-charge of the stocks as well as maintenance of relevant register. 14.The scope of revisional jurisdiction to be exercised by this Court came up for consideration in 2008 Vol.2 Scale 122 (Johar and Others vs Mangal Prasad and Another) and the Honourable Supreme Court, after placing reliance upon many judgments referred by it, has concluded as follows: ?.Revisional jurisdiction of the High Court in terms of Section 397 read with Section 401 of the Code of Criminal Procedure is limited. The High Court did not point out any error of law on the part of the learned Trial Judge. It was not opined that any relevant evidence has been left out of its consideration by the Court below or irrelevant material has been taken into consideration. The High Court entered into the merit of the matter and it sought to re-appreciate the whole evidence and substitute by another possible view.?. The Honourable Supreme Court, on an exhaustive analysis of the legal position, has reversed the order passed by the High Court and restored the order of acquittal passed by the trial Court.

15. In 2013 (10) Scale, page 442, (Venkatesan Vs Rani & Another), it has been held as follows: ?.The revisional jurisdiction of the High Courts while examining an order of acquittal is extremely narrow and ought to be exercised only in cases, where the Trial Court had committed a manifest error of law or procedure or had overlooked and ignored relevant and material evidence thereby causing miscarriage of justice. Re-appreciation of evidence is an exercise that the High Court must refrain from while examining an order of acquittal in the exercise of its revisional jurisdiction under the Code. Needless to say, if within the limited parameters, inference of the High Court is justified the only course of action that can be adopted is to order a re-trial after setting aside the acquittal. As the language of Section 401 of the Code makes it amply clear there is no power vested in the High Court to convert a finding of acquittal into one of conviction.?.

16. This Court has gone into oral and documentary evidence in detail and found that the prosecution has miserably failed to establish that the respondent/accused

was in-charge of the godown in the Head Office as well in- charge of the stocks at the relevant point of time. As rightly pointed out by the learned counsel appearing for the respondent/accused, Exs.P.9 and P.10, the Duty Roaster would also indicate that the petitioner was not in- charge of the godown and he was only a Typist at the relevant point of time. The testimonies of P.Ws.3 to 5, especially P.W.5 would indicate that while preparing the report under Ex.P.12, he has not collected relevant records and not examined relevant witnesses and only based on the alleged voluntary statement given by the respondent/accused, marked as Ex.P.11, he conducted his enquiry and came to the conclusion that the respondent/accused, at the relevant point of time was in-charge of the stocks in the godown and caused loss to the society.

17. A perusal of the exhibits marked on the side of the prosecution would also indicate that allegations have also been levelled against other officials as to the deficiency in stock and consequent loss to the society. But, the prosecution has failed to give any explanation as to the action taken against those, who are also similarly placed as that of the accused.

18. In the considered opinion of this Court, the trial Court, on an exhaustive consideration of oral and documentary evidence, has rightly reached the conclusion that the prosecution has miserably failed to prove its case and further the ingredients of the offences, for which the respondent/accused was charged, have not been proved by the prosecution. There is no error or infirmity in the reasons arrived at by the trial Court for acquitting the respondent/accused. There are no merits in the appeal preferred by the prosecution.

19. In the result, this Criminal Appeal is dismissed, by confirming the order of acquittal, dated 29.11.2004 made in C.C.No.99 of 1999 on the file of the learned Judicial Magistrate No.2, Kulithalai. 03.03.2015 Index :No Internet:Yes vs M.SATHYANARAYANAN, J.

vs To:

1. The Judicial Magistrate No.2, Kulithalai. 2.The Inspector of Police, C.C.I.W., C.I.D., Karur. 3.The Additional Public Prosecutor, Madurai Bench of Madras High

Court, Madurai. Crl.A.(MD).No.136 of 2005 03.03.2015