

## Thirumangalam Municipality Vs Krishnaraj and Another

**Court:** Madras High Court

**Date of Decision:** Aug. 20, 2010

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 307, 386, 389, 391, 392  
Penal Code, 1860 (IPC) â€” Section 120B, 34, 381, 405, 409

**Citation:** (2010) CriLJ 4622

**Hon'ble Judges:** G.M. Akbar Ali, J

**Bench:** Single Bench

**Advocate:** Mohammed Sirajudeen Meera, for the Appellant; Thirumalairajan, for S. Chandrasekar and L. Murugan, Government Advocate, K. Sundaravel, A. Thirumurthy and Thirumalai Advocate for A. Hariharan, for the Respondent

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

G.M. Akbar Ali, J.

Revisions filed under Sections 397 and 401 of Code of Criminal Procedure against the Order of acquittal of the

learned Additional District and Sessions. Judge cum Fast Track Court I, Madurai in C.A. Nos. 231, 230, 234, 235 and 242/2004 dated 31-10-

2005 on his file, against the conviction and sentence passed by the learned Judicial Magistrate No. 1, Madurai in CC Nos. 252 and 223 of 2000

dated 30-9-1994.

2. Thirumangalam Municipality through its Commissioner is the revision Petitioner in all the criminal revisions. The brief facts of the case is as

follows:

3. One Krishnaraj was the Cashier of Thirumangalam Municipality. The said Krishnaraj along with the other accused being the employees of

Thirumangalam Municipality (hereinafter called as ""Municipality"" ) during the year 1997-98 conspired together and in pursuance of the said

conspiracy misappropriated the funds of the Municipality to the tune of Rs. 1,58,917/- and thereby committed the offences of forging the

documents, cheating and committing criminal breach of trust. The said Krishnaraj with active participation of one Sankar Ganesh, a private person,

committed theft of one cheque bearing No. A571626137 of Bharat State Bank from the Accountant, forged the signature of the Commissioner of

Municipality and impersonated as one Balakrishnan, presumed to be a Municipal Contractor and encashed a sum of Rs. 1,74,360/- and the said

Krishnaraj remitted a sum of Rs. 1,10,000/- towards the misappropriated amount and personally gained a sum of Rs. 64,360/- and thus

committed various offences punishable under Sections 381, 467, 468, 471, 477-A, 409 r/w 34 and 420, IPC.

4. On a complaint given by the then Commissioner of Municipality before the Inspector of Police, DCB, Madurai, various cases were registered

and on completion of investigation, charge-sheets were filed for various offences before the learned Judicial Magistrate No. I, Madurai. For the

theft of cheque and encashment of Rs. 1,74,360/-, the case was taken on file in C.C. No. 252 of 2000 against the said Krishnaraj who was

arrayed as A.1 and Sankar Ganesh (arrayed as A.2). For the misappropriation of Rs. 1,58,917/-of the public fund of the Municipality, a case in

C.C. No. 223 of 2000 was taken on file against Krishnaraj (arrayed as A.1). Murali, Manoharan and Jeyapal have been arrayed as A2 to A4.

The cases were tried separately by the learned Judicial Magistrate No. 1, Madurai.

5. In C.C. No. 223 of 2000, 14 witnesses were examined and 54 documents were marked. The accused were charged for the offences

punishable under Sections 120-B, 409 and 420, IPC for misappropriating a total sum of Rs. 1,58,917.30. The learned Judicial Magistrate, in his

well considered judgment found that the accused have committed criminal conspiracy u/s 120-B, has created forged documents and has

committed cheating and thereby all the charges were proved by the prosecution and has imposed a sentence of 1 year R.I. and a fine of Rs. 200/-

each under 120-B, 409 and 420, IPC.

6. In C.C. No. 252 of 2000, against Krishnaraj and Sankar Ganesh, the charges were framed for the offence punishable under Sections 381, 467,

468, 477-A, 471, 409 r/w 34, IPC. These offences relate to theft of the cheque, forgery, impersonation and misappropriation. To prove the

prosecution, 18 witnesses were examined and 11 documents were marked. The learned Judicial Magistrate, in his well considered judgment,

found that all the offences stood proved by the prosecution and imposed one year R.I. and Rs. 200/- fine for each of the offences and in both the

cases, all the sentences were ordered to run concurrently.

7. Aggrieved by the conviction and sentence, the accused preferred individual appeals before the Additional District-cum-Sessions Judge, Fast

Track Court No. I, Madurai. The criminal appeal Nos. 230/2004, 234 and 235/2004 were preferred against the conviction and sentence passed

in CC No. (contd. on Col. 2) 223 of 2000.

8. Criminal Appeals 231 and 242 of 2004 were preferred against the conviction and sentences passed in C.C. No. 252 of 2000. The learned

Additional District-cum-Sessions Judge, Fast Track Court, I Madurai found that in all the appeals the prosecution has not proved the various

offences and has set aside the conviction and sentence thereby acquitting all the accused. Aggrieved by which, the Thirumangalam Municipality

preferred all these revisions before this Court under Sections 397 and 401 of Code of Criminal Procedure.

9. The point that arises for consideration in all these revisions is whether the acquittal by the appellate Court is correct and sustainable ?

10. Mr. I. Mohamed Sirajudeen Meera, the learned Counsel for the Petitioner/Municipality had drawn the attention of this Court to the various

evidence available against the Respondents/accused. The learned Counsel pointed out that the prime accused viz., Krishnaraj has misappropriated

a total sum of Rs. 1,58,917.30 on various occasions, which has been spoken about by various prosecution witnesses. The learned Counsel also

pointed out that to prove the offence committed by the Respondents, documentary evidence was also produced including the audit reports. The

learned Counsel also filed a tabular column showing the amount of misappropriation and the details of such misappropriation and the evidence to

prove those offences as under:

Total amount of misappropriation Rs. 1,58,917/-

Date of occurrence between 3-6-97 and 6-4-98

S. No. Date Responsible accused Details Amount Evidence

1 3-6- KrishnarajaMuraliManoharanWeekly Market-Lease Rs. 10,000 PW-1Kalaiselvan

1997Chalan amount Rs. 10.000A Commissioner

No. 570 paid by

lessorThalamuthuVelalar P. 13 Chitta

through P.W.3 to A.1

P. 14 Chitta

not brought into the

account and

P.W. 3Chinnamuthu

misappropriated by

accused P.W.9Rajasekaran

Audit report Ex. P.

P.W. 10

Chandrasekaran

P52-Enquiry report

2 20-6-97ChallanKrishnarajaManoharan Weekly Market-Lease Rs. 20.000 PW-1Kalaiselvan

No. 787 amount Rs. 20.000/- Commissioner P.

paid by 15Challan remarks

lessorThalamuthuVelalar

through P.W.3 to A.1 P.W. 3Chinnamuthu

not brought into the

P.W.7Nageshwaran

account and

-R1

misappropriated by

accused

P 26Challan

P-27, 28Mis

Register

P29Chitta

PW9-P38. PW 10-

P 52

PW 11-I, O, P 43

receipt.

3 13-8-97ChallanG. KrishnarajaMurali PW 6Jeyaraman paid Rs. 34,666/- PW1 ½Ex

No. 1492 Rs. 34,666/- towards P16Chitta

Bus Stand Entrance fee

lease amount to A.1 not P17 Page 64-Chitta

brought into the

PW6 - Jeyaraman

account-Misappropriate

by the accused

P 18 Receipt

PW 7-R1-Ex P 25

Challan

P27, P30, P31

PW 9, P38-PW

10-P 52

PW 11 I.O.P. 43

receipt

4 14-10- 1. Krishnaraja4. Jeyapal Rs. 618/-Scheme ToiletRs. 618/- PW 1-P11-Chitta

97Challan No. Building Fund collected page 13 PW 7-R1

165 Misappropriated by the P36-Chitta PW9

Accused- not credited Audit Report Ex. P

the same in Canara 38

Bank A/c of

Municipality

5 26-11- 1. Krishnaraja A 1 received Rs. Rs. 1729/- PW 1

97Challan2435 12,209/-towards public

to 2446 4. Jeyapal fund and credited Rs. PW 7-Rule 1

10.480/- in the chitta,

P 32Chitta

both accused

misappropriated the

P 33Chitta

balance Rs. 1729/-

PW 9 EP 38 Audit

report

6 12-1- 1. Krishnaraja A 1 has received Rs. Rs. 62,699/- PW 1

98Challan3039 62,699/- towards Tax

to 3662 4. Jeyapal and Non-Tax items, not PW 7-Rule 1

brought into the account

P 6Chitta

and not paid the same

to Canara Bank

P7- Canara Bank

Municipal Account

scroll

PW 9

P. 38 Audit Report

7 19-1-08Challan1. Krishnaraja A 1 received Rs. 750/- Rs. 750 PW1-P12-V Acant

No. 787 towards vacant land tax Land receipt

4. Jeyapal not brought into the received

account. Accused

misappropriated Page 158

PW7 R.I.P

19Chitta

P 37Chitta

PW. 9 P. 38 Audit

report

8 6-1-98Challan Krishnaraja Late Rs. 13943/- received Rs. 13,943/- PW 1

No. 300-304 Sundaramoorthy by A1 towards Drinking

water deposit-Not PW 8Chitta

brought into the account

P 9Canara Bank

Accused misappropriate

Scroll

PW 7

PW 34Chitta Page

1

PW 9 P 38 Audit

Report

9 19-1-98ChallanKrishnaraja Rs. 9660/- received by Rs. 9660 PW 1

No. 317-320 A 1 towards drinking

Late Sundaramoorthy water tax and deposit PW7-R1

and not paid the same

Ex P35Chitta

into Canara Bank A/c

of Municipality

Page 4 PW-9-P38

Audit Report

10 2-4-1998 Krishnaraja PW2-Chelliah R13/98 Rs. 3777/- PW1, P1-Remarks

Salary of Commissioner &

PW4Petchiammal stayed away duty

from 6-4-98

Pension Rs. 1308/- P23/98 salary list

P33/98 Pension list

totallyRs. 3777/-

P4-PW4 Pension

misappropriated by the

P5 Petty cash Book

accused

PW2Chelliah R1

PW4Petchaimmal

11 6-4-1998 KrisharajaJeyapal Cash Balance of Rs. 1075.30 PW1 Commissioner

Municipality Rs. 1075- P1 Commissioner

30

Remarks in the case

Misappropriate and book and stayed

stayed away from duty away from duty on

on 6-4-98 6-4-98

11. The learned Counsel also pointed out that the prime accused Krishnaraj had committed theft of one cheque leaf from the table of the

Accountant and has forged the signature of the Municipal Commissioner to encash Rs. 1,74,360/- on 2-2-1998 by impersonating one

Balakrishnan and has drawn the said sum. The learned Counsel also pointed out that a sum of Rs. 1,10,000/- has been remitted on 3-3-1998

towards misappropriation and such transaction was proved by oral and documentary evidence. The learned Counsel pointed out that P. Ws. 3 and

4, who are bank officials, would speak about the facts that the prime accused Krishnaraj and his accompish Sankar Ganesh were going to the

Bank to present the forged cheque. The learned Counsel has also drawn the attention of this Court of the evidence of P. Ws. 1 and 2 in C.C. No.

252/2000 and P. Ws. 3 and 4, who are the bank officials in C.C. No. 223 of 2000.

12. I have heard the arguments of Mr. Chandrasekaran, K. Sundaravel, Thirumurthi, Thirumalari Rajan and Hariharan who appeared for the

Respondents. The sum and substance of the argument of the learned Counsel for the Respondents would be that the appellate Court had rightly

appreciated the evidence on record and has found that the prosecution had failed to prove the case beyond reasonable doubt and the High Court

cannot interfere in the acquittal by way of revision. To substantiate their argument, they relied on the decision, reported in L. Chandraiah Vs. State

of A.P. and Another, in which, the Apex Court held as follows:

For the offence u/s 409, IPC it must be proved that a person entrusted with property or with any dominion over property in his capacity as public

servant commits criminal breach of trust in respect of such property, as defined in Section 405, IPC, meaning thereby that he dishonestly

misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law

prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge

of such trust, or wilfully suffers any other person so to do. The crucial word used in Section 405, IPC is ""dishonestly"" and, therefore, it implies the

existence of mens rea, that is to say, a guilty mind.

13. The learned Counsels also relied on (2006) 2 MLJ 211 (Joint Chief Controller of Imports and Exports, Madras v. K.K. Govind Rajan), in

which this Court has held as follows:

Generally the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by

acquittal. The golden thread which runs through the web of administration of Justice in criminal cases is that if two views are possible on the

evidence adduced in the case, on pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused

should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which

may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is

cast upon the appellate Court to re-appreciate the evidence in a case where the accused has been acquitted. For the purpose of ascertaining as to

whether any of the accused committed any offence or not. The principle to be followed by the appellate Court considering the appeal against the

judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly



unreasonable, it is a compelling reason for interference.

14. Per contra, the learned Counsel for the revision Petitioner relied on the decision, reported in 1999 (1) Crimes 499 (Smt. Vasantha v. Smt.

Sivanthi), in which this Court has held as follows:

9. Generally, this Court would be reluctant to disturb the judgment of acquittal in a revision, that too at the instance of a private party. When the

State has not preferred any appeal. However, when this Court finds out misreading of evidence, overlooking the important materials or perversity,

which had led to the grave miscarriage of justice, the interference is quite imperative....

15. I gave my anxious consideration to the arguments of either side and perused the materials on record. Section 397(1) of Code of Criminal

Procedure reads as follows:

397. Calling for records to exercise powers of revision.-- (1) The High Court or any Sessions Judge may call for and examine the record of any

proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the

correctness, legality or propriety of any finding. Sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior

Court and may when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement,

that he be released on bail or on his own bond pending the examination of the record.

Section 401(1) of Code of Criminal Procedure reads as follows:

(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court

may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389, 390 and 391 or on a Court of Session by

Section 307 and when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner

provided by Section 392.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

2, 4 and 5 omitted

16. In CC. No. 252 of 2000 before the learned Judicial Magistrate No. I, Madurai, one Krishnaraj and Sankar Ganesh were charged for the

offence punishable under Sections 381, 467, 468, 477-A, 471, 409 r/w 34, IPC. The case of the prosecution against these two Respondents

were A.1 had committed theft of a cheque bearing No. A571626137 of Bharat State Bank and forged the signature of Commissioner of

Municipality and A.2 impersonated as one Balakrishnan presumed to be the Municipal Contractor and encashed the cheque. To prove the

charges, the prosecution had examined 18 witnesses, out of which, 2 of them were bank officials. The disputed signature was also sent for

handwriting expert and he was examined as P.W. 14. The learned Judicial Magistrate No. 1, Madurai had discussed in detail each and every

witness and has co-related the documentary evidence and found that the prosecution has proved the charges beyond reasonable doubt. On the

contrary, a perusal of the appellate Court judgment, it would show that the appellate Court has not discussed any of the evidence produced by the

prosecution. For e.g. the appellate Court has raised a point for consideration whether the accused have forged the signature of the Commissioner

and has answered that it was not proved beyond reasonable doubt without discussing any evidence. The appellate Court has simply disregarded

the evidence of bank officials on the reason that they have been examined by the Investigating Officer on 5-4-1998 and again were examined on

24-11-1999 after one year seven months and the witnesses were not able to say that he has seen the accused in the bank premises.

17. For each and every charge the appellate Court would raise a question as to whether the offences have been proved and in the next line it

would answer that the offences have not been proved.

18. In C.C. No. 223 of 2000 the same appellate Court proceeded on the same footing and has gone to the extent of saying that the prosecution

has not proved that the prime accused Krishnaraja was a Cashier in the Municipality. Regarding the other accused, the appellate Court has relied

on the decision reported in L. Chandraiah Vs. State of A.P. and Another, which is also relied on in these revisions.

19. The perusal of the judgment would show that the appellate Court has not considered any evidence and has not discussed the correctness and

propriety of the evidence. It is very unfortunate that the appellate Court has brushed aside the handwriting expert's evidence and the bank officials"

evidence. The prosecution has marked as many as 11 documents to prove the misappropriation. But the appellate Court has not even discussed

the documentary evidence.

20. However, the power of this Court is very limited while dealing with the revisional jurisdiction. In the revision, this Court cannot go into the

details of evidence and convert an acquittal into conviction. Once this Court comes to the conclusion that the Court below has not discussed any

evidence and is not satisfied with the correctness, legality or propriety of the finding, the Court can exercise its revisional power to set aside such

finding.

21. In 1999 (1) Crimes 499 (Smt. Vasantha v. Smt. Sivanthi) (cited supra) this Court held,

43. Of course, this Court is quite aware of the limitation, while dealing with the reversional jurisdiction. The limitation is that the acquittal cannot be

converted into conviction, but on reversal of acquittal, the further enquiry or trial can alone be directed. As indicated earlier, once this Court comes

to the conclusion that the findings given by the trial Court are based on surmises and conjectures, overlooking and ignoring the vital piece of

evidence and that the cumulative effect of all the infirmities makes the judgment impeachable and that the findings are perverse, the interference by

this Court would become imperative.

44. In view of what is stated above, I deem it fit to set aside the judgment of acquittal and remit the matter back to the trial Court for re-

consideration of the entire evidence already recorded by the trial Court. However, the learned trial Judge, while deciding the case afresh, shall not

be influenced by any of the observations made in this order, as the above observations should not be taken to mean that the materials overlooked

by the trial Court while rendering judgment have been appreciated by this Court.

22. In Ram Briksh Singh and Others Vs. Ambika Yadav and Another, , the Supreme Court has considered the statutory prohibition contained in

Sub-section (3) of Section 401 of Code of Criminal Procedure from converting a finding of acquittal into one of conviction and the Supreme Court

held,

3. The principles on which reversional Court can set aside a judgment and order of acquittal passed in favour of the accused are well settled by

catena of judgments. The difficulty, however, arises at times about the application of the said principles. It is true that there is a statutory prohibition

contained in Sub-section (3) of Section 401 of Code of Criminal Procedure from converting a finding of acquittal into one of conviction and what

is prohibited cannot be done indirectly as well. The question, however, is has High Court indirectly done what is prohibited.

4. Sections 397 - 401 of the Code are group of sections conferring higher and superior Courts a sort of supervisory jurisdiction. These powers are

required to be exercised sparingly. Though the jurisdiction u/s 401 cannot be invoked to only correct wrong appreciation of evidence and the High

Court is not required to act as a Court of appeal but at the same time, it is the duty of the Court to correct manifest illegality resulting in gross

miscarriage of justice.

23. As stated earlier, the appreciation of evidence by the appellate Court is perverse and it has overlooked and ignored many vital pieces of oral

and documentary evidence and it requires interference by this Court. However, this Court is not inclined to re-appreciate the evidence and convert

the acquittal into conviction and deny an opportunity to the accused.

24. Following the principles laid down in 1999 (1) Crimes 499 (Smt. Vasantha v. Smt. Sivanthi) and Ram Briksh Singh and Others Vs. Ambika

Yadav and Another, the order of acquittal is set aside and the matter is remitted back to the appellate Court for re-hearing and to decide the

appeal on proper appreciation of the evidence and materials on record.

25. In the result, all the revisions are allowed and order of acquittal is set aside and all the revisions are remitted back to the Additional District and

Sessions Judge-cum-Fast Track Court I, Madurai for re-hearing. The appellate Court is directed to rehear all the appeals after affording an

opportunity to the accused/Appellants. The appellate Court shall not be carried over by any of the observations made in these revisions.

Consequently, all the Miscellaneous Petitions are closed.

26. Though the order of acquittal is set aside, the sentence imposed by the trial Court shall stand suspended till the disposal of the appeal. The

parties are directed to appear before the first appellate Court on 15-9-2010. The Registry is directed to forward the entire material records to the

appellate Court immediately.

Petitions allowed.