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**(2010) 08 MAD CK 0427**

**Madras High Court**

**Case No:** Criminal R. C. No's. 56, 57, 58, 59 and 60 of 2006

Thirumangalam Municipality

APPELLANT

Vs

Krishnaraj and Another

RESPONDENT

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

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 307, 386, 389, 391, 392
- Penal Code, 1860 (IPC) - 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

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**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
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3-6-1997	Chalan Krishnaraja Murthy	W. No. 10	Rs. 10,000	PW-1 Kalaiselvan
No. 570	Market-Lease amount	Rs. 10,000A		Commissioner
	paid by lessor	Thalamuthu Velalar		P. 13 Chitta
	through P.W.3			P. 14 Chitta
	to A.1			P.W. 3 Chinnamuthu
	not brought into the account and misappropriated by accused			P.W.9 Rajasekar
				Audit report
				Ex. P. 38
				P.W. 10
				Chandrasekaran
				P52-Enquiry report

20-6-97	Challan Krishnaraja Manohar	Weekly	Rs.	PW-1
No.		Market-Lease	20.000	Kalaiselvan
787		amount		Commissioner
		Rs.		P.
		20.000/-		15Challan
		paid		remarks
		by		P.W.
		lessorThalamuthuVelalar		3Chinnamuthu
		through		P.W.7Nageshwa
		P.W.3		-R1
		to		P
		A.1		26Challan
		not		P-27,
		brought		28Mis
		into		Register
		the		
		account		P29Chitta
		and		PW9-P38.
		misappropriated		PW
		by		10-
		accused		P 52
				PW
				11-I,
				O, P
				43
				receipt.

13-8-97	Challan G.	PW	Rs.	PW1
No.	KrishnarajaMurad Jeyaraman	paid	34,666/-	◆Ex
1492		Rs.		P16Chitta
		34,666/-		P17
		towards		Page
		Bus		64-Chitta
		Stand		PW6
		Entrance		-
		fee		Jeyaraman
		lease		P 18
		amount		Receipt
		to		PW
		A.1		7-R1-Ex
		not		P 25
		brought		Challan
		into		P27,
		the		P30,
		account-Misappropriate		P31
		by		PW
		the		9,
		accused		P38-PW
				10-P
				52
				PW
				11
				I.O.P.
				43
				receipt

4	14-10-97Challan1. No. Krishnaraja4. 165 Jeyapal	Rs. 618/- Scheme Toilet Building Fund collected Misappropriated by the Accused- not credited the same in Canara Bank A/c of Municipality A 1	Rs. 618/-	PW 1-P11-Chitta page 13 PW 7-R1 P36-Chitta PW9 Audit Report Ex. P 38
5	26-11-97Challan2435 to Krishnaraja 2446 4. Jeyapal	Rs. 12,209/- received Rs. 12,209/-towards public fund and credited Rs. 10.480/- in the chitta, both accused misappropriated the balance Rs. 1729/-	Rs. 1729/-	PW 1 PW 7-Rule 1 P 32Chitta P 33Chitta PW 9 EP 38 Audit report

6	12-1-98Challan3039	A 1	Rs.	PW 1
	to Krishnaraja	has	62,699/-	PW
	3662 4.	received		7-Rule
	Jeyapal	Rs.		1
		62,699/-		P
		towards		6Chitta
		Tax		P7-
		and		Canara
		Non-Tax		Bank
		items,		scroll
		not		PW 9
		brought		P. 38
		into		Audit
		the		Report
		account		
		and		
		not		
		paid		
		the		
		same		
		to		
		Canara		
		Bank		
		Municipal		
		Account		



7	19-1-08Challan No. 787	1. Krishnaraja 4. Jeyapal	A 1 received Rs. 750/-towards vacant land tax not brought into the account. Accused misappropriated	Rs. 750	PW1-P12-V Acant Land receipt received Page 158 PW7 R.I.P 19Chitta P 37Chitta PW. 9 P. 38 Audit report PW 1 PW 8Chitta P 9Canara Bank Scroll PW 7 PW 34Chitta Page 1 PW 9 P 38 Audit Report
8	6-1-98Challan No. 300-304	Krishnaraja Late Sundaramoorthy	Rs. 13943/-received by A1 towards Drinking water deposit-Not brought into the account Accused misappropriate	Rs. 13,943/-	PW 8Chitta P 9Canara Bank Scroll PW 7 PW 34Chitta Page 1 PW 9 P 38 Audit Report

19-1-98	Challan	Krishnaraja	Rs.	Rs.	PW 1
No.			9660/-	9660	PW7-R1
317-320	Late	Sundaramoorthy	received		Ex
			by A		P35Chitta
			1		Page
			towards		4
			drinking		PW-9-P38
			water		Audit
			tax		Report
			and		
			deposit		
			and		
			not		
			paid		
			the		
			same		
			into		
			Canara		
			Bank		
			A/c		
			of		
			Municipality		

10	2-4-1998	Krishnaraja	PW2-Chelliah R13/98 Salary PW4Petchiammal Pension Rs. 1308/- totallyRs. 3777/-misappropriated by the accused	Rs. 3777/-	PW1, P1-Remarks of Commissioner & stayed away duty from 6-4-98 P23/98 salary list P33/98 Pension list P4-PW4 Pension P5 Petty cash Book PW2Chelliah R1 PW4Petchaimm PWT
11	6-4-1998	Krisharajajeyapa	Cash Balance of Municipality Rs. 1075-30 Misappropriate and stayed away from duty on 6-4-98	Rs. 1075.30	Commissioner P1 Commissioner Remarks in the case book and stayed away from duty on 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 accomplice 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.