

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4641 of 1996

Parmanand Poddar son of Late Brijlal Poddar, R/o village & P.O. Balia Belwa, Via Salmari District Katihar, Ex-Manager of Rajaun Vyapar Mandal Sahyog Samiti Ltd under Bnka District Banka.

.... Petitioner/s

Versus

1. State of Bihar.
2. The Registrar, Co-operative Societies, Bihar, Patna.
3. The Addl. Registrar, Planning, Co-operative Societies, Bihar, Patna.
4. The Joint Registrar, Co-operative Societies, Bhagalpur Division, Bhagalpur.
5. The Assistant Registrar, Co-operative Societies, Banka Circle, Banka.
6. The Rajoun Vyapar Mandal Sahyog Samaity Ltd, Rajaun, Banka.
7. Shri Jwala Prasad Chaudhary, Salesman, Rajoun Vyapar Mandal Sahyog Samiti Ltd., Village Sohli, P.O. Barauni Bamdeo District Banka.

.... Respondent/s

Appearance :

For the Petitioner/s Mr. Mukesh Kumar, Adv.
For the Respondent/s : Mr. AnisulHaque, AC to AAG-IX

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 03-02-2015

Shivaji Pandey,J

Heard counsel for the petitioner and the respondents.

In the present case, petitioner is challenging the order dated 11th January 1996 passed in Rev. Case No. 33 of 1994 by the court of Additional Registrar (Planning) Co-operative Societies by which he has set aside the order of the Joint Registrar passed in Appeal No. 5 of 1992 (Annexure-3) and affirmed the order passed by the Assistant Registrar in Case No.2 of 1989-90 dated 29th February 1992 (Annexure-7) by which he has dropped the proceeding against the respondent no.7.

The petitioner was the Manager of the Rajoun Vykarpar Mandal Co-operative Societies Ltd (in short, the 'Co-operative Society') whereas respondent no.7 was the Sales Man of the Co-operative Society. The petitioner leveled four charges against the respondent no.7 as follows:

- (1) The petitioner sold fertilizers on credit Memo No. 1551 dated 16th July 1988, 1552 & 1553 dated 13th October 1988 for Rs.53,253.00 only which were fictitious sales and defalcated

the value for his gain.

- (2) He misappropriated the price of fertilizers supplied to Bhagalpur – Banka Gramin Bank, Bamdeo Branch, amounting Rs.4,403/- only.
- (3) He charged less than the sale price, thereby causing a loss of Rs.2,847/- on sale of fertilizer.
- (4) He showed credit sale of fertilizers amounting to Rs.1,190/- to Orhara Agricultural Farm. The amount was received by him vide Receipt No. 1310 dated 12th December 1988, but the same was not accounted for in books.

On that basis a proceeding vide Case No.2 of 1989-90 was initiated and there besides documentary evidence, oral evidence was also taken into consideration where the respondent admitted charge nos. 2 and 4 and agreed to pay and he paid Rs.1,000/- and rest amount, he requested to be adjusted from his salary.

The learned lower court disallowed the award for rest claim. Against that the present petitioner went in appeal in Appeal No. 5 of 1992. The claim was allowed for of Rs.60,693/- against respondent no.7. Against that order of appellate court, respondent no.7 filed Revision Case No. 33 of 1994. The revisional court examined different records and also the other documents has dealt with the same elaborately and recorded following findings. For first charge, following was recorded:

“This fact also corroborates that respondent no.2 failed to enter the receipt of Rs.25,470/- in the Cash Book. Hence it is clear that the petitioner (present respondent no.7) is not liable rather respondent (the present petitioner) is liable for returning of Rs.25,470/-.”

The second charge was with respect to sale on credit to Sri Parmanand Singh of village Bamdeo vide credit Memo No. 1553 dated 13th

October 1988, of 40 bags of NPK & 48 bags of Urea and misappropriated the price of the same amounting to Rs.10,440/-. The revisional court has discussed the materials and arrived to a conclusion as follows:

“It is clear that the respondent no.2 has defalcated the amount and passed on the blame to the petitioner. He is liable to make good the loss to the Society.

The 3rd charge with respect to defalcation of Rs. 18,963/- by respondent no.7 showing the credit sale vide Memo No. 1551 dated 16th July 1988 That was examined by the revisional court and it arrived to a finding that the petitioner was liable for defalcation and ultimately the finding has been recorded that the petitioner has defalcated Rs.46,873/- under different heads.

In view of the findings recorded by the revisional court in which he has discussed in detail considered the records, which were made available before him arrived to finding that it is the petitioner who has committed defalcation of fund of society. This Court while discharging the power of judicial review cannot act as appellate forum unless the finding are perverse not based on material or the fact which was required to be looked into has not been taken into consideration the materials and the facts which are not required to take into consideration, has been taken into consideration.

Counsel for the petitioner has not pointed out any procedural error. If the finding is not perverse, and finding recorded cannot be said prudent person cannot arrive to a conclusion in that circumstance, this Court under judicial review will not interfere with the order of the revisional court.

In such view of the matter, this Court does not find any error in the order passed by the revisional court. Accordingly, this petition is dismissed.

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(Shivaji Pandey, J)