THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION NO.27378 of 2009

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Between:

Athukuri Namo Narayana

PETITIONER

AND

1. The Deputy Registrar of Cooperative Societies, Kovvur, West Godavari District, and others.

RESPONDENTS

ORDER:

Heard learned counsel for the petitioner and learned Government Pleader for Cooperation for respondents.

This writ petition is filed challenging the order dated 5.10.2009 in O.A.No.47 of 2008 passed by the 3rd respondent herein confirming the order of the 1st respondent in Rc.No.1317/92/B dated 31.12.2007.

The case of the petitioner is that he was elected as President to the Unagatla Large Scale Cooperative Society, Unigatla, Chagallu Mandal, West Godavari District, the 2nd respondent herein, for the period 1987 to 1990. While so, the Cooperative Sub-Registrar of the Cooperative Societies directed the Divisional cooperative Officer, Kovvur, to conduct inspection of the accounts of the 2nd respondent-society. After conducting enquiry, the Divisional Cooperative Officer, Kovvur, filed report stating that there was misappropriation of amounts to the tune of Rs.1,32,432.80 on five different counts. Accordingly surcharge enquiry was ordered against the petitioner, M. Lakshminarayana, Ex-Secretary, and P. Subba Rao, Ex-Cashier. The 1st respondent conducted surcharge enquiry and issued proceedings in Rc.No.1317/92/B, dated 17.11.2004 under
Section 60(1) of the Act fastening the liability against the petitioner and two others jointly and severally. Aggrieved by the same, the petitioner filed O.A.No.2 of 2005 before the 3rd respondent, and the same was allowed setting aside the surcharge order and remanded the matter to the 1st respondent to conduct fresh enquiry and to settle the issues after recording both oral and documentary evidence and after giving opportunity to the petitioner and two others pass appropriate orders. The grievance of the petitioner is that even after remand the 1st respondent had not examined any witnesses except the enquiry officer, and ultimately passed fresh surcharge proceedings dated 31.12.2007, stating that the petitioner and two others are responsible for deficiency of the assets of the society and fastened the liability on the first count to the tune of Rs.42,035/- jointly and severally and in so far as other four counts the petitioner was not liable. Aggrieved by the same, the petitioner filed O.A.No.47 of 2008 before the 3rd respondent and the same was dismissed vide order dated 5.10.2009 confirming the order of the 1st respondent. Hence the present writ petition.

This Court while issuing notice before admission on 16.12.2009 granted interim stay for a period of eights weeks and the same was extended on 21.01.2010 for a period of six weeks. Thereafter, on 21.04.2010 while admitting the writ petition passed the following interim order.

> "The petitioner has already deposited a sum of Rs.21,050/- (Rupees twenty one thousand and fifty only) while preferring the appeal. In a way that amount exceeds liability fastened upon him.

Therefore, interim stay granted earlier is extended until further orders."

Learned counsel for the petitioner contended that the Ex-Secretary and Ex-Cashier were looking after the vouchers and maintenance of cash book, vouchers and receipts, and they are responsible for the alleged lapses. The learned counsel also contended that there are trained staff to carryout the day to day transactions of the society, and the petitioner, being illiterate man, was not well versed with the accountancy and calculations and subscribe his signatures as per the advice of the Departmental people or Financing Bank. But the 1st respondent has erroneously fixed the financial liability against the petitioner jointly and severally. The learned counsel further contended that the petitioner had been acquitted by the Criminal Court for the charges of misappropriation and cheating. To buttress his contention, he placed reliance on the judgment of this Court **A.D.S. Sarma v. Deputy Registrar of Cooperative Society Amalapuram, E.G. District** wherein it has been held that once the Criminal Court acquitted the accused in similar facts and in similar circumstances based on the similar evidence, it would be unreasonable and arbitrary to subject the petitioner to surcharge proceedings on the same charge that he has misappropriated money or has been found guilty of breach of trust in relation of the society.

On the other hand, learned Government Pleader supports the finding of the Tribunal and submits that there being no complaint of violation of principles of natural justice and lack of jurisdiction, the writ petition filed questioning the orders of the Tribunal, is not maintainable.

I have considered the rival contentions of both the learned counsel and perused the orders of both the Deputy Registrar as well as the A.P. Cooperative Tribunal.

The Tribunal has elaborately dealt with all the factual aspects while dismissing the O.A and gave a finding that as per Bye-law No.26 of the Society the president has the overall control on the day to day administration and the custodian of the assets, cash balance and other properties of the Society. As per Bye-law No.27 the Secretary has the power to administer the Society under the control of the President. Though the Secretary is the employee of the Society and is bound to maintain accounts and records of the society correctly, the alleged financial fraud cannot take place in the society without the knowledge of the petitioner who is the President of the Society. Therefore, the President cannot wash off his hands totally putting the responsibility on others. The Tribunal fastened the liability on the President along with Ex-Secretary M. Lakshminarayana and Ex-Cashier P. Subbarao, jointly and severally for the alleged misappropriation of the funds of the Society.

In my considered view, the Tribunal rightly held that the alleged illiteracy cannot be a ground for exonerating the petitioner from the liability arising under Section 60 of the Act. The other argument that the petitioner has been acquitted in the criminal proceedings, also cannot absolve the petitioner of the liability under Section 60 of the Act as Section 60 is a civil liability and if loss is caused on account of negligence, the same is recoverable from the persons responsible. In view of the language used in Section 60 it cannot be said that the petitioner was wrongly fastened with the liability.

Considering the fact that pending disposal of the O.A, the petitioner had deposited an amount of Rs.21050/-, which was kept in a fixed deposit and the said amount exceeds the liability fastened upon him, I deem it appropriate to direct the respondents to refund the balance amount after adjusting the amounts due to the Society, if any, to the petitioner.

Accordingly the writ petition is disposed of directing the 3rd respondent to retain a sum of Rs.14,012/- as directed by the 1st respondent and make over the same to the 2nd respondent-society. The balance amount, if any, shall be refunded to the petitioner with accrued interest.

As a sequel, pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

CHALLA KODANDA RAM, J.

19th November, 2015

Js.