

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2016

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH

AND

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

Writ Appeal No.1275 of 2016

and CMP.No.16554 of 2016

R.Krishnaraj

..Appellant

Vs

1.The Deputy Registrar of
Co-operative Societies
Cuddalore Region
Cuddalore District

2.The Cooperative Sub-Registrar
/Enquiry Officer
The Cuddalore Agricultural Producers
Cooperative Marketing Society
Cuddalore District

3.The Inspector of Police
Commercial Crime Investigation Wing
Cuddalore Region
Cuddalore District

..Respondents

Prayer : Writ Appeal filed against the order passed in W.P.No.21776 of 2014 dated 28.04.2016. Writ of certiorari, to call for the records of the Second respondent is his proceedings dated 01.04.2014 and quash the same.

For Petitioner :: Mr.AR.L.Sundaresan,
Senior Counsel
for Mr.Kavi Veerappan
For Respondents :: Mrs.T.Girija,
Govt.Advocate for R1
Mr.P.S.Sivashanmuga
Sundaram, Spl.G.P., for R3
Mr.L.P.Shanmugasundaram,
Spl.G.P., for R2.

JUDGMENT

(Order of the Court was made by HULUVADI G.RAMESH, J.)

Heard Mr.AR.L.Sundaresan, learned Senior counsel appearing for the appellant, Mrs.T.Girija, learned Government Advocate, appearing for the 1st respondent, Mr.L.P.Shanmuga Sundaram, learned Special Government Pleader, appearing for the 2nd respondent and Mr.P.S.Sivashanmuga Sundaram, Special Government Pleader appearing for R3.

2. The learned Senior counsel for the appellant submits that the entire misappropriation has been committed by one Mr.K.Karunanidhi and action has been initiated against him and he has remitted the entire money. He further submits that the appellant is the Special Officer and in no way in picture in the issuance of Crops Loan and he is only the signing authority in the Cheque along with the accountant as per the recommendation of the Accountant and the Supervisor of the District Co-operative Society. The learned Senior counsel further contended that apart from looking after the respondent-Society, he is in-charge of 7 to 8 cooperative societies and his role is minimum. It is also contended that there is no specific finding in the enquiry proceedings with regard to misappropriation of money or wilful negligence or breach of trust and hence for an offence of cheating or misappropriation, there is no element of mens rea and hence no cause of action arises herein for any criminal prosecution.

3. The learned Single Judge, after taking into consideration the submissions made on behalf of the Writ Petitioner/Appellant herein, pointed out that the writ petition is premature and further made an observation, that the third respondent-the Inspector of Police, Commercial Crime Investigation Wing, Cuddalore Region, should not be solely guided by the report of the second respondent-The Cooperative Sub Registrar/Enquiry Officer, Cuddalore Agricultural Producers Cooperative Marketing Society, but as an Investigating Officer, he should investigate, whether any criminal offence has been committed. While doing so, he should also bear in mind the circular dated 11.12.1991 issued by the Registrar of Co-operative Societies.

4. Mr.P.S.Sivashanmuga Sundaram, learned Special

Government Pleader, submits that as per the Tamil Nadu Co-operative Societies Act, 1983, the appellant has to go before the Revisional authority for his relief.

5. The learned Single Judge, pointed out that the impugned proceedings is only a report submitted by the 2nd respondent under Section 81 of the Act; under normal circumstances, the report could lead to a disciplinary proceeding against the employee of the society as well as action under Section 87 of the Act for recovery of the amount, if any, misappropriated and criminal prosecution. The learned Single Judge further observed that the Writ Petitioner is worried only about the third aspect i.e., criminal prosecution, because that alone has been recommended by the 2nd respondent.

6. In the Writ Petition, the challenge is only to enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act and also to the finding of the Enquiry Officer that K.Karunanidhi is holding entire responsibility for this irregularity and R.Krishnaraj (appellant) is in connivance with the said irregularity without supervising and affixing his signature in the cheques and the 2nd respondent further noted that criminal action may be initiated against the above said persons.

7. As pointed out by the learned Single Judge, impugned proceedings is only a report submitted by the 2nd respondent under Section 81 of the Act; under normal circumstances, the report could lead to a disciplinary proceeding against the employee of the society as well as action under Section 87 of the Act for recovery of the amount, if any, misappropriated and criminal prosecution. Even in such cases, after conclusion of surcharge proceedings, an aggrieved person has remedy by way of an appeal under Section 152 to the Cooperative Tribunal constituted therein. It is presided over by a District Judge who is empowered to go into both the questions of facts and law and also has power to grant an interim order and there is no condition for predeposit.

8. Further, it is unthinkable as to how the petitioner can challenge the notice under Section 81 of the Tamil Nadu Cooperative Societies Act. It is merely an enquiry into the affairs of the society called by the Registrar. Upon report being produced and if satisfied, he can order either criminal prosecution or surcharge proceedings or any disciplinary action. Ultimately, depending upon the report if the Registrar proceeds or directs with any one

of the action set out above and if such proceedings culminated any final order, there are remedies provided to each one of the head of action and that such import cannot be challenged.

9. The learned Senior counsel appearing for the appellant sought to contend that the appellant comes under Supervisory Cadre and the revision or appeal provision could be applicable only to the members and Directors of the society.

10. In our considered view, the contention of the learned Senior counsel appearing for the appellant that the appellant has nothing to do with the affairs of the society and he is only the Special Officer and he was unnecessarily implicated in the criminal proceedings, and that the appellant had no connivance for commission of the offence much less no way connected with the misappropriation, is bereft of any merit.

11. The fact remains that the appellant was very much entrusted with the supervisory work as regards the functioning of the society. However, the contention of the appellant that the misappropriation alleged would not come under his nose much less also came to the light of the society and on enquiry, the Enquiry Officer found that Mr.K.Karunanidhi was holding entire responsibility for the irregularity and subsequently, the said K.Karunanidhi has also paid Rs.1 crore 26 lakhs to the society. As such, the issue to be considered in this Writ Appeal is that whether there is any connivance of the appellant in his personal capacity arise at all and whether he is totally innocent. These are ultimately to be considered before the Revisional Authority and in the writ jurisdiction, this court cannot conduct any roving enquiry in this regard.

12. On such fact finding, the very Authority provided under the statute while going into the allegations of misappropriation or connivance, shall also safeguard the interest of the appellant. All the contentions are left open to the appellant to raise it before the appropriate statutory authority within one month from the date of receipt of a copy of this order. Thereafter, it is for the statutory authority to issue due notice to the other side and consider the issue in detail and pass appropriate orders in accordance with law.

13. With the above observation, the writ Appeal is disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Deputy Registrar of
Co-operative Societies
Cuddalore Region
Cuddalore District

2.The Cooperative Sub-Registrar
/Enquiry Officer
The Cuddalore Agricultural Producers
Cooperative Marketing Society
Cuddalore District

3.The Inspector of Police
Commercial Crime Investigation Wing
Cuddalore Region
Cuddalore District

+1cc to Mr.L.P. Shanmugasundaram, Advocate, S.R.No.59866

+1cc to Mr.Kaviveekappan, Advocate, S.R.No.14370

+1cc to the Government Pleader, S.R.No.60185

sm (CO)

md (10/11/2016)

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