* **THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

+ WRIT PETITION No.8268 of 2009

%05.01.2016

T.Narayana Murthy

….Petitioner

Vs.

$ The Deputy Registrar of Cooperative Societies,
Srikakulam and ors

…. Respondents

! Counsel for the Petitioner: Sri E.Satyanarayana, Advocate representing Sri Srinivas, Polavarapu,

Counsel for Respondents: Government Pleader for

Cooperation

<Gist :

>Head Note:

? Cases referred: AIR 1999 SC 1416(1)
1998(2) ALT 248
1998(1)ALT 482(DB)
2002(5)ALD 520
2002(6)ALT 380
2009(5)ALT 92
(2003)6 SCC 675
(2015)9SCC 1

HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 8268 of 2009

DATED 5TH JANUARY, 2016

BETWEEN

T.Narayana Murthy

…Petitioner

And

The Deputy Registrar of Cooperative Societies,
Srikakulam and ors

…Respondents

HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 8268 of 2009

ORDER:

This Writ Petition is filed for issuance of Writ of Certiorari to quash the order dated 28.07.2008 passed in O.A.No.76 of 2005 by the A.P. Cooperative Tribunal, at Visakhapatnam confirming the orders of the first respondent in RC.No.4992/89-E, dated 19.09.2005.

Brief facts of the case are that; the petitioner worked as President of the Primary Agricultural Cooperative Society, Srimukhalingam, Jalumuru Mandal, Srikakulam District in the year 1989. One N. Sudarshan Rao worked as Secretary of the said society at that point of time. Based on the inspection report made under Section 52 of the A.P. Cooperative Societies Act, 1964 (for short 'the Act'), surcharge proceedings were initiated against the petitioner. Through orders dated 19.4.1994 of the first respondent, the petitioner was fastened with liability of payment of Rs.27,196/- with interest at 18% per annum from 16.01.1990. The said order of the first respondent was challenged before the A.P. Cooperative Tribunal in O.A.No.50 of 1994. The said OA was allowed by an order dated 12.10.1999 setting aside the surcharge orders and remanding the matter for fresh enquiry on the ground that no adequate opportunity was provided to the petitioner. After remand, fresh proceedings were initiated and after conducting an enquiry on 19.9.2005, surcharge orders were passed confirming the misappropriation of Rs.27,196/- by the petitioner and the said amount was directed to be paid with interest at 18% per annum one again. Challenging the said order, the petitioner filed O.A.No.76 of 2005, which came to be dismissed by order dated 28.07.2008.

The surcharge order as confirmed in O.A.No.76 of 2005 is challenged by the petitioner before this Court on the grounds that the same is perverse, that the same is based on no evidence; that Section 52 enquiry report was not furnished to the petitioner; that the Enquiry officer/Deputy Registrar failed to summon the witnesses who are required to be examined by the petitioner; that the findings of the Deputy Registrar are based on mere surmises and conjectures; that the Criminal Case filed against the petitioner ended in acquittal and that no original records were produced. Finally it is urged that the surcharge proceedings as confirmed by the Tribunal are liable to be set aside.

To buttress his contentions, the learned Counsel for the petitioner relied on the decision of the Apex Court in **Capt.**

M.Paul Anthony Vs. Bharat Gold Mines Ltd {AIR 1999 SC 1416(1)}, decisions of this Court in **M.N. Narasamma Vs. H.C.M. Society** {1998(2) ALT 248}, **Challa Sanyasinaidu Vs. Deputy Registrar of Cooperative Societies, Srikakulam** {1998(1) ALT 482 (DB)}, **A.D.S. Sarma Vs. Deputy Registrar of Cooperative Society, Amalapuram, E.G. District** { 2002(5) ALD 520}, **Lankala Koderu Cooperative Rural Bank Ltd., Palacol Mandal ,WG District Vs. Ungarala Pullaiah Naidu** {2002(6) ALT 380} and **V.V.Satyanarayana Vs. Chebrolu Primary Agrl.Co-op. Society Ltd.**, { 2009(5) ALT 92}.

A counter affidavit has been filed by the Deputy Registrar on behalf of the first respondent denying the averments made in the affidavit filed in support of the Writ Petition and supporting the findings of the authorities.

Considered the persistent and persuasive arguments of Sri E. Satyanarayana, Advocate representing Sri Srinivas Polavarapu, learned Counsel for the petitioner. Perused the material on record scrupulously.

It may be necessary for this Court to revisit the scope of interference of the orders of the Tribunal in exercise of Certiorari jurisdiction under Article 226 of the Constitution of India. It is well settled by the Apex Court in ***Suryadeva Rai Vs. Ram Chander Rai*** {(2003)6 SCC 675} and ***Jogendrasinghji Vijaysinghji Vs. State of Gujarat*** { (2015) 9 SCC 1} that the jurisdiction and scope of interference with the orders of the lower Tribunals is limited while exercising jurisdiction under Article 226 of the Constitution. In the light of the limitations in the special original jurisdiction, the case on had requires to be examined.

The findings of the Deputy Registrar in the surcharge order is that the President along with Secretary had signed cheques for disbursement of loan amounts in favour of three dead persons at Rs.1400/- each. The President being the local person cannot claim ignorance and ought to have known about the said aspect. The defence on the part of the petitioner was that he being the President only acts as supervisor and the entire loan transactions including sanction and disbursement would be undertaken by the supervisor and Secretary apart from the Committee and in that view of the matter, it is the responsibility of the authorities to appraise the President of the situation of the nature in the present case. As he is exercising over all control of the Society, he cannot be mulcted with liability. Further the amount of Rs.35,000/- alleged to have been mis-utilized by him, there is no evidence brought on record to prove that aspect. On the other hand, the witnesses who are required to be examined were not summoned in spite of his request. A perusal of the surcharge order does not indicate that such request was made inasmuch as no names of witnesses were mentioned proposing to examine in the enquiry. On the other hand, on behalf of the Enquiry Officer, D.Satyanarayana, Inspecting Officer of the Society, K. Suryanarayana, Ex-Supervisor of the DCCB Branch, Kotabommali B.Narayana Rao, Ex. Branch Manager were examined. Opportunity to cross examine them was provided by issuing notice vide proceedings Rc.No.4992/89-E, dated 20.03.2004. Thereafter the matter was adjourned and the petitioner did cross-examine the witnesses produced before the enquiry. In that view of the matter, the contention of the petitioner that no adequate opportunity was provided to prove his innocence is contrary to the material on record.

With regard to the allegation of the petitioner that he was not furnished with inspection report made under Section 52 of the Act is also contrary to the findings recorded in the surcharge proceedings. As a matter of fact, Xerox copy of the inspection report was made available to him. The other contention of the petitioner is that without producing the original inspection report, Xerox copy of the same which was taken on record cannot be relied on. In other words, the petitioner has raised a technical objection to the effect that Xerox copy of the inspection report cannot be produced in evidence in the proceedings before the Enquiry Officer. It is well settled that the enquiry officer is not required to follow strict rules of procedure in the enquiry proceedings as laid down in CPC or Evidence Act especially when the genuineness of the report is not in dispute. In that view of the matter the contention of the petitioner that he was not furnished with inspection report is contrary to the finding of the Enquiry officer and material on record. In the absence of any prejudice, reliance placed by the Enquiry Officer on the Xerox copy of the enquiry report made under Section 52 of the Act does not invalidate the impugned order.

So far as production of original records is concerned, in fairness, it is true. However, D. Satyanarayana in his depositions had confirmed that surcharge proceedings were initiated based on the inspection report made under Section 52 of the Act and there was a specific finding recorded in the Inspection Report in regard thereto. He further deposed based on the material available on record. The full details of the inspection report has not been produced on the ground of long duration of eleven years passed by in the interregnum period. It may be worth mentioning herein that initially enquiry report was made on 26.5.1993 on account of the initiation of surcharge proceedings in the year 1993 and on remand, once again enquiry was conducted. D. Satyanarayana, Inspecting Officer of the Society and K.Suryanarayana, Ex. Supervisor of DCCB Bank were examined in between 20.3.2004 and 31.5.2005. It is not the case of the petitioner that non production of original enquiry report has resulted any prejudice or disadvantage to him or there is any doubt with respect to the genuineness of the copy of the inspection report produced before the Enquiry Officer. In the absence of any prejudice being caused to the petitioner on account of non production of the original report in the process of enquiry. Even if the allegations of the petitioner are taken to be true, the same does not vitiate the enquiry and it does not result in nullifying the surcharge proceedings.

So far as the contention of the petitioner that the criminal proceedings initiated against the petitioner resulted in acquittal is concerned, it is well settled that in criminal proceedings the finding of guilt beyond reasonable doubt is a pre requisite for conviction and further the entire burden rests on the prosecution to prove the accused guilty beyond reasonable doubt. In the present case, acquittal of the petitioner is only on account of giving benefit of doubt. The finding of the enquiry officer is based on the deposition of the Supervisor that particular loan transactions were not routed through him and they were sanctioned by the President and Secretary on their own is not discredited. Further the Secretary in his deposition categorically asserted that disbursement of loan amount was solely undertaken by the petitioner is also not discredited. It is an admitted fact that the President had acknowledged receipt of the amount of Rs.35,000/-on 18.7.1989 in the DCCB Branch, Kotabommali from the cashier. There was no material supporting the claim of the petitioner that the said sum of Rs.27,000/- was paid in installments for disbursement of loans, The petitioner failed to produce any evidence supporting his claim. The Enquiry Officer recorded categorical finding that the said sum of Rs.27,000/- has been misappropriated by the petitioner. There is also no considerable material before the appellate authority to support the case of the petitioner.

Before parting with the same, one thing needs to be stated to the credit of learned Counsel for the petitioner that the learned Counsel sought to develop the case of the petitioner by bringing various legal precedents as stated supra. The effort made by him is appreciable. It may be borne in mind that the said decisions are delivered based on the factual scenario as available in those respective cases. So far as ratio decidendi is concerned, there is no quarrel with the same. The findings in the present case as conclusively arrived at by the Enquiry Officer in the surcharge proceedings and confirmed by the Tribunal do not warrant interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

For the foregoing discussion, the Writ Petition is dismissed. Miscellaneous petitions pending consideration if any in the Writ Petition shall stand closed in consequence. No order as to costs.

JUSTICE CHALLA KODANDA RAM

DATED 5TH JANUARY, 2016.
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