

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

WP.No.20959 of 2012 and
MP.No.2 of 2012

M.Kanagasabapathy

Petitioner

Vs.

1. The Principal District Judge/
the Cooperative Tribunal,
Namakkal District,
Namakkal
2. The Deputy Registrar of
Cooperative Societies,
Tiruchengode Circle,
Tiruchengode - 637 211,
Namakkal District
3. No.S.390, Pothanur Primary Agricultural
Cooperative Bank Limited,
Rep.by its Special Officer,
Pothanur - 638 181,
Paramathivelur Taluk,
Namakkal District

...Respondents

PRAYER: The Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the entire records relating to the Impugned Judgment and Decree passed by the Principal District Judge / Cooperative Tribunal, Namakkal made in CMA.CS.No.15 of 2010 dated 18.10.2011 by confirming the Order / Award passed by the second respondent Registrar made in Tha.Va.No.2779/98-99 dated 27.06.2005 and quash the same.

For petitioner : Mr.R.Krishnamoorthy

For respondents : R1 - Tribunal
: Mrs.T.Girija,
Government Advocate for R2
: Mr.L.P.Shanmuga Sundaram,
Special Government Pleader for R3

ORDER:

The petitioner was working as an Assistant Secretary in the third respondent bank during the period when one, Anbalagan and one, K.Rajalingam were working as clerk and salesman respectively in the same bank. The second respondent issued a summon to the petitioner under Section 90 (2) of the Tamil Nadu Cooperative Societies Act, 1983 alleging that the above Rajalingam and Anbalagan had misappropriated certain sum of money by falsifying the records and the petitioner had failed to supervise the same. Further, an enquiry was conducted and on the basis of the enquiry, it was found that the above amount was misappropriated by the said Rajalingam and Anbalagan. Following the enquiry report, a Surcharge proceedings was initiated against the petitioner as well as the said Anbalagan and Rajalingam. After giving opportunities to the aforesaid persons, a Surcharge Order was passed against the petitioner and other employees of the third respondent bank. According to the petitioner, the third defendant namely Rajalingam has admitted misappropriation. In spite of the admission made by the third defendant, the Surcharge award has been passed against the petitioner and the second defendant. Being aggrieved by the said award, the petitioner has challenged the award in CMA.No.15 of 2010 before the Principal District Judge, Namakkal cum Cooperative Tribunal. The second and third defendants have not filed any appeal and the said award has become final. The appeal preferred by the petitioner was erroneously dismissed by the Appellate Tribunal. Therefore, the petitioner has filed the present writ petition before this Court.

2. According to the learned counsel for the petitioner, the third defendant has admitted that he has misappropriated the amount of Rs.3,82,220/-. The petitioner being the Secretary incharge, is only responsible for supervising the bank as per the bye-laws. Therefore, there is no intention for the misappropriation of the said amount. Hence, the petitioner is not responsible for the misappropriation. But, the Tribunal has erroneously fixed jointly and severely liability of the misappropriation against the petitioner.

3. Per contra, the learned Government Pleader would submit that the Appellate Tribunal has rightly dismissed the contention of the petitioner holding that, as per the bye-laws, the duty of the petitioner to maintain accounts and books up-to-date as per Section 84 of the Tamil Nadu Cooperative Societies Act, 1983.

4. On perusal of the records, it is not the case of the petitioner that, as per the bye-laws, the petitioner is not responsible for supervising of the bank. But the contention of the petitioner is that he has not misappropriated the said amount from the bank. In the light of the said provision, the petitioner is also responsible for the misappropriation committed by the third and fourth defendants. Therefore, there is no substance in the contention of the petitioner. Hence, the same is liable to be rejected. It is useful to extract the Section 84 of the Tamil Nadu Cooperative Societies Act, 1983, which reads as follows.

"Maintenance of accounts and books by registered society:-

The Chief executive that is, the Principal paid officer of every registered society by whatsoever designation he is called, or the President of that society, if there is no such chief executive in that society, shall be bound to keep and maintain such accounts and books relating to that society in such manner as may be prescribed. He shall be responsible for the correct and upto date maintenance of such accounts and books and for producing them when called for in connection with audit under Section 80 or inquiry under section 81 or inspection or investigation under Section 82 or inspection of books under Section 83."

5. The petitioner's contention, the third and fourth defendants have admitted in the claim petition that they have misappropriated the amount from the bank. Therefore, the petitioner is not responsible for misappropriation. However, there is lapses on the part of the petitioner that he has failed to discharge his duty to supervise the maintenance of the accounts and books, when it is an admitted fact, the petitioner has to maintain up-to-date accounts and books of the society. When the petitioner being responsible for supervising the bank, that too dealing with the transaction of the funds among the members of the bank and also from the depositors. Therefore, the petitioner is also liable for the loss sustained to the society. Therefore, the impugned Judgment passed by the Tribunal does not warrant any interference.

6. The learned counsel for the petitioner would submit, since the third and fourth defendants have admitted the misappropriation of funds, subsequent to the said award, the third respondent bank has filed execution petition and the same is pending before the Deputy Registrar, Trichengode.

7. In view of the above, this Court has considered the requests of the learned counsel for the petitioner that recovery action has already been taken against the third and the other defendants. In the event of the respondent is unable to recover the aforesaid amount, due to the third respondent bank, it is open to the third respondent bank to proceed against the petitioner for recovering the said amount.

8. In view of the above, the writ petition fails and accordingly, the writ petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

/true copy/

Sub Assistant Registrar

lok

To

1. The Principal District Judge/
the Cooperative Tribunal,
Namakkal District,
Namakkal
2. The Deputy Registrar of
Cooperative Societies,
Tiruchengode Circle,
Tiruchengode - 637 211,
Namakkal District
3. The Special Officer,
No.S.390, Pothanur Primary Agricultural
Cooperative Bank Limited,
Pothanur - 638 181,
Paramathivelur Taluk,
Namakkal District

- 1 cc to M/s. K. Premkumar, Advocate, Sr. 69136
1 cc to M/s.L.P. Shanmugasundaream, Advocate, Sr. 69599
1 cc to Government Pleader, Sr. 70114

WP.No.20959 of 2012 and
MP.No.2 of 2012

NRI (CO)
kk 17/11