

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.10.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.3673 of 2012
and
M.P.No.1 of 2012**

V.Janarthanan

.. Petitioner

Vs.

1.The Deputy Registrar Co-op. Societies,
Section 87 Surcharge Officer,
Krishnagiri Circle, Krishnagiri.

2.The Section 81, M.Krishnan,
Enquiry Officer/Co-op. Sub Registrar,
O/o. of the Joint Registrar Co-op. Societies,
Dharmapuri.

3.The Management D.D.100,
Kodamandapatti Primary Agricultural Co-op. Bank Ltd.,
Kodamandapatti Post, Pochampalli Taluk,
Krishnagiri District.

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4.K.S.Velu, Secretary,
D.D.100, Kodamandapatti Primary
Agricultural Co-op. Bank Ltd.,
Kodamandapatti Post, Pochampalli Taluk,
Krishnagiri District.

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the decree and judgment dated 30.03.2012 in C.M.A.(CS)No.17 of 2008 passed by the learned Principal District Judge at Krishnagiri, confirming the surcharge case No.10276/2003/Sa.Pa. dated 29.02.2008.

For Petitioner : Mr.T.Sundaravadanam

For Respondents : Mr.M.S.Palaniswamy (for R3)
No Appearance (for R1, R2 and R4)

ORDER

The petitioner has filed this Civil Revision Petition to set aside Decree and Judgment dated 30.03.2012 made in C.M.A.No.17 of 2008 on the file of the Learned Principal District Judge at Krishnagiri and to allow the above civil revision petition.

2.The revision petitioner's case is that while he was working as Special Officer and was holding additional charge D.D.100,

Kondamandapatti Primary Agricultural Co-operative Bank, a surcharge proceeding was initiated under section 87 of the Tamilnadu Co-operative Societies Act by the 1st respondent herein.

3.The charge against the petitioner herein is that he sanctioned two loans to the tune of Rs.40,000/- and Rs.45,000/- for planting turmeric plant. For the said loan a bogus documents were produced. The petitioner herein without verifying the documents sanctioned the loan and thereby caused loss to the bank and therefore he is liable to repay the said loan amount with interest. For the said irregularities an enquiry was initiated as contemplated under Section 81 of the Tamilnadu Co-operative Societies Act.

4.According to the petitioner, in the enquiry conducted under section 81 of the Act, the enquiry officer held that the petitioner herein has no role in the prosecution case and he only recommended for disciplinary action and the disciplinary proceeding against him also dropped. The petitioner further contented that in the enquiry the members namely Saravanan, Chinnathambi and Ambiga admitted that they obtained loan and they will repay the loan amount to the bank, but the same was not considered by the first respondent herein. There

is no negligence on the part of the petitioner herein.

5.The further contention of the petitioner is that the persons who received loan from the bank were not brought in the surcharge proceedings. Admittedly there is no misappropriation of funds of the bank and therefore the petitioner is not liable for the loss caused to the bank. Without considering the above said aspect, the 1st respondent passed surcharge order on 29.2.2008 against the petitioner and others. Against which the petitioner filed statutory appeal before the learned Principal District Court (Co-operative Tribunal), Krishnagiri in C.M.A.No.17 of 2008 under Section 152(1)(a) of the Act. The learned Principal District Judge has erroneously dismissed the appeal. Challenging the same the present revision is filed.

6.On the other hand, it was contented by the respondents that the properties mortgaged with the bank is not the properties of the persons who obtained loan from the bank and it belongs to some other persons. Without verifying the documents produced by the borrower, the petitioner has sanctioned the loan and therefore he is responsible for the loss caused to the society to the tune of

Rs.70,600/-. Further, the petitioner being a Special Officer has neglected his service and therefore he is liable for the loss caused to the society. Hence, the 1st respondent by order dated 29.02.2008 passed surcharge order against the petitioner herein and other. There is no irregularity or infirmity in the said order and therefore the respondents prayed this Court to dismiss this revision.

7.I heard Mr.T.Sundaravadanam, learned counsel appearing for the petitioner and Mr.M.S.Palaniswamy, learned counsel appearing for the 3rd respondent and the entire records are perused. I have carefully considered the rival submission on either side. There was no representation on behalf of the respondents 1, 2 and 4.

8.Admittedly the petitioner herein was holding additional charge of D.D.100, Kondamandapatti Primary Agricultural Co-operative Bank, Kondamandapatti that too for 47 days i.e., from 25.05.2001 to 10.7.2001. During his tenure as Special Officer, he has not sanctioned any new loan and he has only renewed three loans and the same were sanctioned by the previous Board in approval of the Secretary, Clerk, Supervisor, ect., of the bank. Further as rightly contented by the learned counsel for the petitioner, no surcharge proceedings are

initiated against the members who borrowed the loan and not repaid the same. The loan availed was admitted by the members. Therefore in the considered opinion of this Court, initiation of surcharge proceedings against the petitioner herein is not proper and the same is liable to be set aside.

9. Considering the misappropriation, it is useful to refer the Judgment of this Court relied on by the petitioner in the matter reported in 2010 (4) CTC 13, wherein this Court held as follows in para 29 that:

“Section 87 of the Tamil Nadu Cooperative Societies Act, 1983, under which the present surcharge proceedings were initiated, makes a person liable to repay or restore the money or property of a society, if it is found in an inquiry or investigation that he had

- (i) misappropriated any money or other property of society
- (ii) fraudulently retained any money or property of the society
- (iii) been guilty of breach of trust, or
- (iv) caused any deficiency in the assets of society, by breach of Trust or willful negligence, or
- (v) made any payment not in accordance with the Act, the Rules or Bylaws.

Unfortunately for the second respondent, none of these ingredients is established in the Arbitration proceedings

against the petitioners herein. The entire surcharge proceedings go on the basis that there was negligence on the part of the petitioners in the discharge of their duties as Cooperative Sub-Registrars.”

10. Admittedly, the case on hand there is no misappropriation by the petitioner. The loan amount borrowed by the members remains unpaid. For the non-payment of such loan amount, the society should have taken steps to recover the loan amount from its members in a manner known to law and for that the petitioner cannot be held liable or responsible. Hence no liability can be fasten against the petitioner for the non-payment of loan amount by the members of the society. In view of the facts involved in the case and in the light of the decision referred above, this Court has no hesitation to hold that there is no misappropriation by the petitioner in the case on hand.

11. In so far as the contention of the petitioner to the effect that as per Clause(2) of the Bye Law No.38 of the Kondamandapatti Primary Agricultural Co-operative Bank the Secretary is entrusted with and he is the authority responsible for day to day administration of the bank. In the case on hand, the 4th respondent served as a full time paid secretary of the bank. If at all any negligence is

attributable, it could be only against the 4th respondent herein. Hence neither negligence nor misappropriation can be attributed against petitioner.

12.The 1st respondent as well as the Learned Principal District Judge, Krishnagiri have not appraised the above factual and legal issues. Therefore in my considered opinion, the impugned orders herein do not hold good in the eye of law and fact.

13.In the result, this Civil Revision Petition succeeds and the order dated 30.03.2012 in C.M.A.(CS)No.17 of 2008 passed by the learned Principal District Judge at Krishnagiri, confirming the surcharge case No.10276/2003/Sa.Pa. dated 29.02.2008, are hereby set aside. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

23.10.2017

vs

Speaking Order
Index:Yes

To

The Principal District Judge,

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Krishnagiri.

M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(NPD)No.3673 of 2012
and
M.P.No.1 of 2012

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