IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.12.2017
Pronounced on : 31.08.2018

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P.No.8472 of 2000

G.Shunmugasundaram ... Petitioner

Vs

1. The Co-operative Tribunal
Coimbatore,
(Principal District Court,
Coimbatore).

2. The Deputy Registrar of
Co-operative Societies-Coimbatore,
Collector Office compound,
Coimbatore - 641 018.

3. The Coimbatore District
Consumer Co-operative
Wholesale Stores Limited,
Rep. by its Special Officer,
Mettupalayam Road,
Coimbatore - 641 025.

4. N.S.Narayanan

5. M.Jayalakshmi

6. M.Venkateswaran

7. M.Shobana

8. M.Rajini

9. M.Rajesh

10. M.Ramesh (Minor) ... Respondents
Reb. by Guardian Mother
M.Jayalaksmi

Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records relating to the proceedings in A.R.C.No.63 of 82-83, dated 02.03.1989 on the file of the Deputy Registrar of Co-operative Societies, Coimbatore, the second respondent herein, continued in C.C.M.A.No.28 of 1995 on the file of the Co-operative Tribunal, Coimbatore (Principal District Court, Coimbatore), the first respondent herein, culminating in the order of the Co-operative Tribunal, Coimbatore, dated 21.12.1998 and quash the same.

For Petitioner : Ms.P.Bagyalakshmi

For Respondents: R1 - Tribunal

Mr.L.P.Shanmugasundaram, Spl.G.P for R2

Mr.K.Muthukumarasamy for R3

Mr.A.Jenasenan for R4

No Appearance for R5 to R10

O R D E R

The prayer sought for in this writ petition is for issuance of a writ of certiorari, calling for the records relating to the proceedings in A.R.C.No.63 of 82-83, dated 02.03.1989 on the file of the Deputy Registrar of Co-operative Societies, Coimbatore, the second respondent herein, continued in C.C.M.A.No.28 of 1995 on the file of the Co-operative Tribunal, Coimbatore (Principal District Court, Coimbatore), the first respondent herein, culminating in the order of the Co-operative Tribunal, Coimbatore, dated 21.12.1998 and quash the same.

2. The necessary facts, which are required to be noticed for the disposal of this writ petition are as follows :

(i) The third respondent is a society registered under the Tamil Nadu Co-operative Societies Registration Act, 1983 (in short "the Act") and it has been running super markets in the name of "Chinthamani super market", at various places in Coimbatore. In the third respondent society, the fourth respondent was working as Cashier. The writ petitioner was working as Assistant Cashier and one V.Manian was working as Double lock officer-cum-Accountant. According to the third respondent, all these three persons are responsible for the cash collected on behalf of the society from various stores and the same shall be kept in a chest in the strong room, which will have the facility of double lock system and one key could be with the cashier and another key could be with the double lock officer and the cash kept in safe custody in the chest available at the strong room of the society would be deposited in the bank next day.

(ii) With this work entrustments and work pattern, these three people were working at the third respondent society.

(iii) While that being so, on 06.09.1982, that was Monday, when the society was started functioning, the petitioner had written in the chitta book that the cash balance as closed on 04.09.1982 was neither signed by the fourth respondent nor it was handed over to him. It is to be noted that, in the previous day, i.e., on 05.09.1982 being a Sunday, it was holiday and therefore, what was the closing balance as on 04.09.1982, the cash should have been kept in the chest in the strong room of the society under the custody of the fourth respondent and the Double lock officer. It is also to be noted that on 06.09.1982, the fourth respondent did not turn up for duty and he had sent an application for leave.

(iv) Thereafter on 07.09.1982 also, the fourth respondent did not turn up duty and he wanted to extend the leave on piecemeal basis, however on 07.09.1982 leave was not granted by the third respondent society to the fourth respondent and he was directed to come and open the double locker to watch over the chest, from which only the cash balance kept in the previous day can be taken out.

(v) However the fact remains that, the fourth respondent did not turn up and he had sent a communication to the third respondent society, seeking extension of leave on medical ground and on 14.09.1982, he had sent a letter stating that he has been hospitalised, however the cash balance is in the chest at double locker only and he was prepared to hand over the key to a messenger for opening the chest to get the cash.

(vi) However, the third respondent society did not incline to accept the said suggestion given by the fourth respondent through the letter, dated 14.09.1982. Therefore a police complaint was given and in the presence of the Deputy Tahsildar concerned the locker was broken open on 20.09.1982, where they found that only a sum of Rs.3,727.04/- alone was found.

(vii) However, the closing balance as on 04.09.1982 was Rs.6,41,637.48/-. Therefore subtracting the available cash, i.e., Rs.3,727.04/-, the remaining amount of Rs.6,37,907.44/- was not available in the locker. Therefore, since the said amount alleged to have been misappropriated by the fourth respondent, who was the cashier, a complaint was made against him by the society and subsequently, ARC proceedings also were initiated against the fourth respondent before the second respondent in ARC No.63/82-83.

(viii) Though initially the ARC was filed only against the fourth respondent cashier under Section 73 of the Tamil Nadu Co-operative Societies Act (Old Act) on 22.09.1982, subsequently the third respondent society came to know about the alleged involvement of the writ petitioner as well as Double lock officer one V.Manian and accordingly, the claim petition was filed separately on 10.12.1982 against the writ petitioner as well as the Double lock officer.

(ix) The said ARC proceedings was heard and concluded by the second respondent on 02.03.1989, whereby the second respondent directed that all the three persons, i.e., fourth respondent, the writ petitioner and V.Manian, the Double lock officer would be jointly and severally liable for the loss caused to the third respondent society by way of misappropriation and therefore, the entire amount of Rs.6,37,907.44/- shall be paid by the three persons jointly with interest at the rate of 15% p.a., from 05.09.1982 till the date of realisation.

(x) As against the said order passed by the second respondent, two appeals were filed before the Special Tribunal for Co-operative cases, Madras as STCA.No.194 of 1989 and 197 of 1989 and those appeals were taken on file on 30.11.1989. Thereafter since the Special Tribunal for Co-operative cases was abolished, those appeals were transferred to the Principal District Court, Coimbatore, where it has been renumbered as C.C.M.A.Nos.28 of 1995 and 39 of 1995 and accordingly, they were taken on file by the said Court on 03.01.1995. Out of the two appeals, C.C.M.A.No.28 of 1995 was filed by the writ petitioner and the other one was filed by the fourth respondent. Both these miscellaneous appeals were heard together and the learned Principal District Judge, Coimbatore, by way of common order, dated 21.12.1998, dismissed those appeals, by confirming the order and award passed by the second respondent, i.e., Deputy Registrar of Co-operative Societies, Coimbatore in ARC No.63 of 82-83, dated 02.03.1989. Aggrieved over the said order of dismissal made by the learned Principal District Judge, Coimbatore in C.M.A.No.28 of 1995, the petitioner has filed this writ petition with the aforesaid prayer.

3. Mrs.P.Bagyalakshmi, learned counsel appearing for the petitioner made submissions that, the petitioner was working only as Assistant Cashier and as per the job entrustment, he was nothing to do with the safe custody of cash balance at the third respondent society. The learned counsel would further submit that, on 02.09.1982, the cash chitta was signed by both the fourth respondent as well as the said Manian, who was the Double lock officer. However, on 03.09.1982, only the Double lock officer had signed it but the fourth respondent had not signed. On 04.09.1982, both of them had not signed it. The next day, i.e., on 05.09.1982 being Sunday, it was a holiday, therefore

the next working day was 06.09.1982 and on that day when the petitioner reported duty at the third respondent society, he found that the cash chitta was not signed by the fourth respondent nor the cash balance had been given to him as Assistant Cashier. When this was reported by the Assistant Cashier, i.e., the writ petitioner on noticing the same, it was found that the fourth respondent not turned duty on 06.09.1982 and he had sent a leave letter. The next day also he did not turn up, therefore, memo had been sent by the third respondent society to the fourth respondent to immediately report for duty. He had not chosen to come forward and on 14.09.1982, he sent a letter stating that, on medical ground, he wanted to extend his leave and the cash balance as on 04.09.1982 has been kept in the locker and the key was with him and he was ready and willing to hand over the key by sending it through a messenger.

4. The learned counsel appearing for the petitioner would further submit that, however the third respondent society did not accept such offer made by the fourth respondent to send the key through a messenger and sensing some foul on the part of the fourth respondent, the third respondent society had made a police complaint and also reported it to the Tahsildar concerned, with the result only on 20.09.1982 in the presence of the Deputy Tahsildar and the police people, the locker was broken open and it was found that only a paltry sum of Rs.3,727.04/- was available in the locker and therefore a huge sum to the extent of Rs.6,37,907.44/- was missing. Thereafter complaint was given to the police and also ARC proceedings was initiated against the fourth respondent alone.

5. The learned counsel appearing for the petitioner would further submit that, that being the position, all of a sudden, the third respondent society had filed further proceedings making joint acquisition against the petitioner as well as the Double lock officer, i.e., one Manian and in this regard, another ARC proceedings was filed and accordingly both the ARC proceedings were heard and the second respondent had given a defective order without appreciating the factual matrix of the case as well as the job entrustment on the part of the writ petitioner and ultimately gave a findings and directions that all the three are jointly and severally liable to pay back the entire loss of a sum of Rs.6,37,907.44/- to the third respondent society with 15% interest from 05.09.1982 till the date of realisation.

6. In this regard, the learned counsel appearing for the petitioner would further submit that, the implication of the petitioner in the said proceedings is an after thought and he can never be put on responsibility for the loss of money, as it was the responsibility of the third respondent and the said Double lock officer, Manian to have the custody of the cash,

that is the reason why the cash has to be kept every day, at the closing of the account, in the chest and the same can be under the double locker system in the strong room available in the third respondent society and the keys would be shared both by the fourth respondent and the Double lock officer.

7. The learned counsel for the petitioner would further submit that, even though the Principal District Judge of Coimbatore in the order impugned has found that it is the job responsibility of only the fourth respondent and the Double lock officer alone to maintain the cash balance safely, ultimately in the concluding area, the learned Judge has concluded that, all the three, including the writ petitioner, were jointly and severally liable for the loss and accordingly, dismissed the C.C.M.A filed by the writ petitioner also.

8. In this regard, the learned counsel for the petitioner would rely upon the discussion made by the learned Judge in the impugned order and has particularly relied upon the following discussion :

> "From the available materials it would be clear that the closing balance of Rs.6,52,047.41/- which was verified on 3.9.82 and 4.9.82, the first defendant owes a duty to verify and sign but has not signed and 5.9.82 was a holiday and 6.9.82 the opening balance should have been Rs.6,41,634.13/- and from the endorsement made by 2nd defendant as found in Ex.A.11, the said amount was not handed over to him and as per the terms and conditions, the defendants 1 to 3 are jointly responsible for the cash balance. Despite number of (the end of the page 19 in the original) Memos and express Memos served on the first defendant he was purposefully evading his presence by sending applications for leave. The first defendant who was responsible and duty-bound to account for the cash balance along with two others has been wantonly evading and dodging to comply with the directions would not only amount to dereliction of duty but also indicative of the fact that he had his hand in the deficiency of cash in the plaintiff / stores."

She also relied upon the following finding of the learned Judge, which reads thus :

> "It is not the case of the first defendant that those proceedings fixing the duties and responsibilities on the Cashier, Assistant

> Cashier and Accountant / Double Lock Officer were not followed either or given effect to. Having not signed the cash chittas on 3.9.82 and 4.9.82, the first defendant cannot be allowed to state that he maintained the accounts properly till 4.9.82. The fact that the first defendant has not signed the cash chittas on 3.9.82 and 4.9.82, that his continuous absence from 5.9.82 to 22.9.82 despite urgent and special Memos with direction to hand over the cash balance and the key of the chest would clearly point out to misappropriation of the said amount. Under the afore stated circumstances his contention that he had no knowledge about the misappropriation has to be rejected."

9. Per contra, Mr.K.Muthukumarasamy, learned counsel appearing for the third respondent society would submit that, the duties and responsibilities of the writ petitioner had been fixed in the proceedings, which were marked as Ex.A.1. The by-law of the society has also been marked as Ex.A.31, which indicates the responsibility of the Treasurer, who is the custodian of the cash of the stores. The said responsibility had been entrusted to the Cashier, i.e., the fourth respondent. The said cash management have infact been jointly entrusted to three employees, Cashier, Assistant Cashier and Double lock officer. The cash chitta is maintained for the day today transaction of the stores. It has to be written every day only by the writ petitioner as an Assistant Cashier and the same has to be closed by the Cashier and it has to be verified by the Double lock officer.

10. Therefore, the learned counsel would further submit that this arrangement would clearly indicate that, it is the joint responsibility of the three employees, who have to maintain the cash balance safely and securely and remit the same on the next day at the Bank. Even though the Double locker key shall be available only with the Cashier and the Double lock officer and the key would not be available with the writ petitioner, on that ground, the writ petitioner cannot have any shelter and that he is not responsible for the safe custody of the cash.

11. The learned counsel would further submit that, if at all the fourth respondent Cashier did not sign on 03.09.82 and 04.09.1982, it is the duty of the writ petitioner to either get the signature from him or to report the same to the society, i.e., to its Special Officer.

12. When consecutively two days the Cashier did not sign in the cash balance chitta and after having noticed the same, the

writ petitioner kept it at his chest by not divulging the same to anyone and not reporting the same to the Special Officer of the society and this attitude on the part of the writ petitioner clearly establish that he had an intention to do some mischief along with other two and that is the reason why he had not brought to the notice of the Special Officer of the society about the non-signing by the Cashier. Also on 04.09.1982, the Double lock officer did not sign and that factor also not been brought to the notice of the Special Officer of the society by the writ petitioner.

13. Only on the third day, i.e., on 06.09.1982, he had recorded stating that the Cashier had not signed on 04.09.1982 and therefore the cash balance also have not been entrusted to him as Assistant Cashier. No reason had been adduced by the writ petitioner as to why he did not reveal the same that the Cashier had not signed for consecutively two days to the society or to the Special officer and therefore that lacking of information from the side of the writ petitioner would strengthen the acquisition against the writ petitioner also and that is the reason why his involvement in the alleged misappropriation was not ruled out and therefore, the ARC proceedings were initiated against him also, which was considered by the second respondent in proper perspective and ultimately found that all the three were jointly and severally liable for the misappropriation and the loss.

14. It is to be noted that, in so far as Double lock officer, namely one V.Manian is concerned, since he died, on his behalf, his legal heirs were impleaded before the Court below, who are shown as respondents 5 to 10 herein and on their behalf, no one was appearing.

15. On behalf of the fourth respondent, Mr.A.Jenasenan, learned counsel appeared, who would submit that, till 04.09.1982, the cash balance received was kept in safety locker and the next day was Sunday and from 06.09.1982 onwards, he was on leave and though he was medically suffered and he was taking treatment, for the same he had sent a letter to the society that he would send back the key through a messenger, with a help of that the safety locker can be opened. However, the same was not accepted by the society and the society unilaterally decided to broke open the locker. When the locker was broken open, the fourth respondent was not available and therefore, with regard to the allegation made by the society against the fourth respondent, there is no evidence. The learned counsel would further submit that, as far as the fourth respondent is concerned, the entire cash balance as on 04.09.1982 had been kept only at the safety locker and the same was not thereafter opened by the fourth respondent. Therefore, he is not responsible for any loss and he had not involved in any misappropriation.

16. I have also heard Mr.L.P.Shanmugasundaram, learned Special Government Pleader appearing for R2, who would submit that, the second respondent, after having considered the factual matrix of the case as well as the evidences adducted before the said authority had passed orders in ARC proceedings, fixing the responsibility on all the three employees, including the writ petitioner and the said finding have been confirmed by the learned Judge in the order impugned and therefore, the said order passed by the second respondent does not require any interference from this Court.

17. I have considered the rival submissions made by the learned respective counsels appeared for the parties and have also perused the records placed before this Court.

18. The admitted facts in this case are that, all the three persons, i.e., the writ petitioner, fourth respondent and one Manian had been working as Cashier, Assistant Cashier and Double lock Officer respectively at the third respondent society. As per the working arrangement, the fourth respondent Cashier was the incharge of the cash and during day time, the writ petitioner has to collect the same and has to be handed over to the fourth respondent, who in turn would receive and sign it and the same has to be verified and accounted by the said Double lock officer and ultimately the cash balance shall be kept in safe chest at the strong room of the society everyday at the closing of the accounts and the same would be taken in the next morning from the safe chest and would be remitted at the Bank.

19. In so far as this working arrangement of cash dealing of the third respondent society is concerned, all the three employees are jointly involved, as each one of them has been entrusted with specific job to be undertaken.

20. It is the further fact that, the cash balance on 02.09.1982 was entrusted, vouched, signed and kept in safe custody by the Cashier and Double lock officer. However, on 03.09.1982 and 04.09.1982, the third respondent had not signed it and on 04.09.1982, the Double lock officer had also not signed it. Why these two people had not signed on 03.09.1982 and 04.09.1982 had not been explained by them. On 14.09.1982, it is claimed by the fourth respondent that, he sent the letter stating that the cash balance as on 04.09.1982 was available in the safety locker and the keys are also available with him. This written communication of the fourth respondent clearly establishes that on the closing of the account on 04.09.1982 also, he had kept the cash at the safety locker. Therefore, he had taken the responsibility that till 04.09.1982, the cash had been entrusted to him and he had kept the same in the safety locker. It is also the claim of the fourth respondent that the

keys were available with him only.

21. If the said stand taken by the fourth respondent is taken into account, there can be no quarrel on the fact that the cash balance as on 04.09.1982 has been received by the fourth respondent and has been kept in the safety locker. Therefore, merely because he had not signed in the chitta or cash balance register, the fourth respondent cannot take any defence that he is not responsible for the alleged missing of the cash to the tune of Rs.6,37,907.44/-.

22. When the locker was opened on 20.09.1982 in the presence of revenue people and police people, by way of broke open, it was found that, only a sum of Rs.3,727.04/- was available. Therefore, the fact remains that cash to the extent of Rs.6,37,907.44/- had been missing.

23. In this context, there cannot be two opinion about the cash missing to the extent of that amount, as between 04.09.1982 and 06.09.1982, there had been no other vouchment of the cash, except the safe custody under the domain of the fourth respondent, of course along with the Double lock officer, who was supposed to verify the account and sign the register.

24. It is also a fact that on 03.09.1982, the fourth respondent did not sign and on 04.09.1982, both the fourth respondent as well as the Double lock officer did not sign. However, it is the admission on the part of the fourth respondent that, the cash balance as per the closing account on 04.09.1982 had been kept in the safety locker and the keys were available with him.

25. Therefore, if at all any cash deficit from the closing balance as on 04.09.1982 evening, the entire responsibility shall be rest only with the fourth respondent and the Double lock officer, as both are liable to hold the key in the double locker system and they only have to keep the cash in the safety locker.

26. In this context, the role of the writ petitioner, who was the Assistant Cashier was only to hand over the cash and keeping the cash in the safe custody is not the job of the writ petitioner.

27. Even though, it was argued on behalf of the third respondent society that, as per the work entrustment, all the three employees were jointly and severally liable to keep the cash in safe custody, on analysing the working pattern of these three employees in keeping the cash balance in safe custody, the role of the writ petitioner, being the Assistant Cashier, is only limited.

28. More over, it is the own admission on the part of the fourth respondent that, he received and kept the cash as on 04.09.1982 in the safety locker and for the same, the keys are also available with him. It is also a fact that after 04.09.1982, the fourth respondent never turned to the society for work, as the 5th September was Sunday and from 06.09.1982 onwards, he did not turn up.

29. In this regard, even though a finding was given by the learned Judge in the order impugned that, the fourth respondent Cashier had not signed the cash chitta on 03.09.1982 and 04.09.1982 and his continuous absence for duty from 05.09.1982 to 22.09.1982, despite urgent and several memos with directions to hand over the cash balance and the key of the chest, would clearly point out the misappropriation of the said amount, ultimately, the learned Judge concluded that all the three were responsible for the misappropriation.

30. In so far as the Double lock officer is concerned, since he died, no defence on his behalf was taken and when notices were issued to the legal heirs, who have been subsequently impleaded as respondents, they did not turn up to take a defence. Therefore these aspects would go to show that the fourth respondent and the Double lock officer were mainly responsible for the safe custody of the cash balance of the third respondent society. Even though the writ petitioner has also been entrusted with some activities dealing with cash, the said activities are mainly in the day time and after having completed the same it has to be handed over only to the Cashier at the end of the day. If at all the writ petitioner had not handed over the cash to the Cashier as per the accounting, the Cashier, i.e., the fourth respondent could have raised the issue then and there. However, the fact remains that, the cashier did not raise the issue and infact, he had stated that cash balance as on 04.09.1982 had been received and kept in safe custody at the locker and the keys also are available with him. When that being the position, we cannot put a blame on the writ petitioner for having not entrusted the cash to the Cashier.

31. However, the responsibility severally and jointly had been fixed on the writ petitioner by the Courts below, only on the ground that, the writ petitioner had not brought to the notice of the society about the non-signing by the Cashier on 03.09.1982 and 04.09.1982 and the Double lock officer on 04.09.1982. Therefore it was held that the writ petitioner also had been jointly liable for the misappropriation.

32. This reasoning given by the Courts below to fix the responsibility on the writ petitioner also, in the opinion of this Court, is not justifiable in view of the given facts and circumstances of the case.

33. Suppose the fourth respondent and the Double lock officer had claimed that the writ petitioner, being the Assistant Cashier did not hand over the cash and the account all these days, i.e., on 03.09.1982 and 04.09.1982 and the balance was not tallied and therefore they did not sign it and did not receive it, the responsibility could be extended on the writ petitioner also. But there was no such complaint either from the Cashier or from the Double lock officer against the writ petitioner. Instead, it is the admission of the Cashier, i.e., the fourth respondent that, he received and kept it as on 04.09.1982 in the safety locker and it has been locked and therefore, the keys are with him. When that being so, the reasoning given by the Courts below by fixing the joint responsibility on the writ petitioner also by merely taking into account the stand taken by the society that all the three employees are jointly and severally liable, in the opinion of this Court, cannot be accepted and therefore, the said joint liability fixed on the writ petitioner also, by both the Courts is liable to be interfered.

34. In the result, the impugned order in so far as the writ petitioner is concerned is set aside. The said loss caused to the third respondent society shall be made good by the private respondents, i.e., 4 to 10, as per the terms made by the Courts below through the impugned order.

With these modification and observation, the writ petition is allowed in so far as the writ petitioner is concerned. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The Co-operative Tribunal
Coimbatore,
(Principal District Court,
Coimbatore).

2. The Deputy Registrar of
Co-operative Societies-Coimbatore,
Collector Office compound,
Coimbatore - 641 018.

3. The Special Officer
The Coimbatore District
Consumer Co-operative
Wholesale Stores Limited,
Mettupalayam Road,
Coimbatore - 641 025.

+1cc to Mr.A.Jenasenan, Advocate, S.R.No.59954

+1cc to Mr.V.Sanjeevi, Advocate, S.R.No.59942

W.P.No.8472 of 2000

GJII(CO)
GSP(14/09/2018)