

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2019

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

CRP NPD No.1614/2010,
CRP NPD No.2853 of 2010,
and CRP NPD No.2335 of 2012
and M.P.No.1 +1 of 2010
and M.P.No.1 of 2012

In CRP NPD No.1614/2010

N.Krishnan

... Petitioner

Vs.

1. Registrar of Co-operative Societies,
Deputy Registrar Office, Krishnagiri.
2. The Special Officer,
K.K.127, Hosur Primary Agricultural
Co-op. Bank Ltd., Hosur.
3. K.A.Manoharan, Ex.Chairman,
Hosur Primary Agricultural
Co-operative Bank Ltd.,
82, M.G.Road, Hosur.
4. D.M.Rajan, Secretary
(Under suspension),
Hosur Primary Agricultural Co-operative
Bank Limited.

5. C.Pattammal,
Deputy Secretary (under suspension),
K.K.127, Hosur Primary Agricultural
C-operative Bank Limited.

6. N.Kumari

7. P.Srinivasan, Bank Inspector,
Dharmapuri District Central Co-operative
Bank Limited.

(Revision petition against R3 to R7 given up)

.... Respondents

In CRP NPD No.2853/2010

N.Kumari

... Petitioner

Vs.

1. Registrar of Co-operative Societies,
Deputy Registrar Office, Krishnagiri.

2. The Special Officer,
K.K.127, Hosur Primary Agricultural
Co-op. Bank Ltd., Hosur.

3. K.A.Manoharan, Ex.Chairman,
Hosur Primary Agricultural
Co-operative Bank Ltd.,
82, M.G.Road, Hosur.

4. D.M.Rajan, Secretary
(Under suspension),
Hosur Primary Agricultural Co-operative
Bank Limited.

5. C.Pattammal,
Deputy Secretary (under suspension),
K.K.127, Hosur Primary Agricultural
C-operative Bank Limited.

6. N.Krishnan

7. P.Srinivasan, Bank Inspector,
Dharmapuri District Central Co-operative
Bank Limited.

(Revision petition against R3 to R7 given up)

.... Respondents

In CRP NPD No.2335/2012

C.Pattammal

... Petitioner

Vs.

1. Registrar of Co-operative Societies,
Deputy Registrar Office, Krishnagiri.

2. The Special Officer,
K.K.127, Hosur Primary Agricultural
Co-op. Bank Ltd., Hosur.

3. K.A.Manoharan, Ex.Chairman,
Hosur Primary Agricultural
Co-operative Bank Ltd.,
82, M.G.Road, Hosur.

4. D.M.Rajan, Secretary
(Under suspension),
Hosur Primary Agricultural Co-operative
Bank Limited.

5. N.Kumari

6. N.Krishnan, Clerk,
(under suspension,
K.K.127, Hosur Primary Agricultural
Co-operative Bank Limited,
7. P.Srinivasan, Bank Inspector,
Dharmapuri District Central Co-operative
Bank Limited.

(Revision petition against R3 to R7 given up)

.... Respondents

Civil Revision petitions filed under Article 227 of the Constitution of India against the decree and judgment dated 17.02.2010 passed in CMA (Co-operative societies) No.8/2008 to 10/2008 by the Principal District Judge, District Co-operative Cases Appellate Tribunal, Krishnagiri confirming the surcharge order dated 21.12.2001 passed in surcharge case No.14/2000/Sa.Pa.1 by the Deputy Registrar, Office of the Registrar of co-operative societies, Krishnagiri.

For Revision Petitioner : Mr.K.V.Shanmuganathan

For respondent No. 2 : Mr.M.S.Palanisamy

For Respondent No.1 : No appearance

Revision against R3 to R7 : Given up

COMMON ORDER

Aggrieved over the decree and judgment passed by the Principal District Judge, District Co-operative Cases Appellate Tribunal, Krishnagiri, dismissing the appeals and confirming the surcharge order dated 21.12.2001 passed in surcharge case No.14/2000/Sa.Pa.1 by the Deputy Registrar, Office of the Registrar of co-operative societies, Krishnagiri, these revision petitions have been filed.

2. The revision petitioner in CRP NPD No.1614/2010 namely N.Krishnan was the clerk, and the revision petitioner in CRP NPD No.2853/2010 namely N.Kumari was the Cashier and the revision petitioner in CRP NPD No.2335/2012 namely C.Pattammal was the Assistant Secretary in the Primary Agricultural Co-operative Bank Limited, Hosur.

3. While they were working in their respective capacity in the said Primary Agricultural Co-operative Bank Limited, an enquiry was conducted by the Sub Registrar (inspection), Sub Registrar Office, Krishnagiri, under Section 81 of the Tamil Nadu Co-operative Societies

Act, wherein, it was found that bogus loans were sanctioned and amounts have been misappropriated by the defendants 1 to 6, including the revision petitioners to the tune of Rs.44,86,350/- in which a sum of Rs.2,44,537/- was recovered and the balance amount of Rs.42,41,813 to be recovered.

4. In pursuant to the findings of the enquiry officer, surcharge proceedings were initiated and surcharges were framed against the defendants 1 to 6 under three category i.e. (i) they created bogus receipts in the name of fictitious persons and a sum of Rs.17,00,350/- was sanctioned from 10.05.1997 to 07.08.1999; (ii) Similarly they created bogus receipts in the name of fictitious persons and a sum of Rs.22,14,000/- was sanctioned from 13.12.1997 to 15.07.1999; (iii) they inflated the loan amounts, to the tune of Rs.5,72,000/- as against the original sanctioned loan amount; and thereby the defendants 1 to 6 caused total loss to the tune of Rs.44,86,350/- in which a sum of Rs.2,44,537/- was recovered and the balance amount of Rs.42,41,813 to be recovered from them.

5. In the surcharge proceedings, the Deputy Registrar, issued notice to all the defendants. After giving opportunities to the parties, he found that the amounts referred to above were infact, misappropriated by the Secretary and their subordinates, who made entries in the ledger, day book, receipt, voucher etc. and ordered to recover the same from the defendants 1 to 6. Against which, the present revision petitioners, who are the defendants 3 to 5, filed CMA No.8/2002, 9/2002 and 10/2002 before the District Co-operative Societies Cases Appellate Tribunal, Krishnagir and the appellate tribunal dismissed the appeals and confirmed the orders passed by the Deputy Registrar. As against which, the present revision petitions have been filed.

6. It is the contention of the learned counsel for the revision petitioners that there was no by-laws fixing the responsibility of each of the employees of the agricultural co-operative bank and that merely on the basis of the circular issued in the year 1999, much after the alleged misappropriation, the liability cannot be fastened on the revision petitioners. It is his further contention that the Secretary has admitted the misappropriation before the enquiry officer and hence,

the revision petitioners, who just acted on the direction of the Secretary and made some entries in the documents, they cannot be fastened with the liability and hence, there was no wilful negligence on the part of the revision petitioners. Even in the show cause notice also, there is no wilful negligence attributed against this revision petitioner and hence the revision petitioners who are the Clerk, Cashier, and Assistant Secretary cannot be brought under surcharge proceedings. In support of his contentions, he relied upon the judgment of this Court reported in CDJ 1998 MHC 576, emphasising the contention that without fixing the responsibility of the staffs, surcharge cannot be levelled against them.

7. Countenancing the above submissions, the learned counsel for the 2nd respondent would contend that the enquiry officer has factually found that the amount have been misappropriated and all the records have been created together by all of the officers. He would further contend that admittedly, the loans have been sanctioned in fake names and the amounts have been misappropriated by the defendants, including the revision petitioners and all of them are well aware of the above facts and merely because there is no by-laws, that

cannot be a ground to absolve them from liability. He would further contend that the enquiry officer has factually found that the records have been manipulated and huge amount has been misappropriated and hence, the revision petitions lacks merits.

8. I have perused the entire records. The primary charges against all the three revision petitioners are that, while they were serving as Assistant Secretary, Cashier and Clerk, the Board of Directors of the Society all together manipulated the documents to show, as if the loans were sanctioned to various persons, though the loans were actually not disbursed to any members of the society. Thereby, caused a loss to the tune of Rs.444,86,350/- to the Co-operative bank.

9. Admittedly, all the three revision petitioners were working in the society at the relevant point of time. The specific charges against them are that in the names of fictitious persons, loans were sanctioned and the amounts have been misappropriated. The Secretary has also appeared before the enquiry officer and admitted that the above amounts have been misappropriated. Besides, all the

revision petitioners also the beneficiaries from the misappropriated amount. The Cashier was responsible for handling the cash, similarly, the Assistant Secretary has responsibility to maintain the records properly and the Clerk shall make necessary entries. Admittedly, the loans have been sanctioned in the fictitious names, without disbursing the loans to the actual members and the accounts were also been created, as if the loans were disbursed. When such thing has been happened in the cooperative bank, it cannot be simply said that without fixing any duties and responsibilities, the revision petitioners cannot be fastened with liability. The creation of the records from Clerk, up to the President level, cannot be done simply by a direction of one person. Unless each of them have contributed their specific act, these records would not have been created. When the loan itself was fictitious and certain loans are inflated, every entries were made to show, as if the entire transactions were genuine and each of the servants working in the co-operative bank had a knowledge that they are acting against the duties and responsibilities and infact, they connived together to create such documents. Therefore, I do not accept the contention of the learned counsel for the revision petitioners that only when the duties and responsibilities have been

fixed, the revision petitioners can be prosecuted. Such contention in my view, lead to the serious consequences.

10. No doubt the Division Bench of this Court, in an earlier occasion, has held that without the by-laws fixing duties and responsibilities, surcharge proceedings cannot be initiated. But the above judgment is not applicable to the facts of this case, for the simple reason that all of them are given a responsibility, their responsibility is inherent in their service to maintain the documents. When all of them had knowledge that the loans were sanctioned to the fictitious persons and the amounts have been misappropriated, their act is nothing but conspiracy to each other to manipulate the documents. Therefore, I do not find any error or infirmity in the order passed by the appellant tribunal. The primary duty of a person, to whom given job to serve the society is to maintain proper accounts. When the accounts have been manipulated and made entires in every level, it cannot be said that there is no wilful negligence on the part of the revision petitioners and infact they committed such act deliberately, within the knowledge of each other and certainly their act would come under the purview of willful negligence. Accordingly, I do

not find any merits in the revision petitions.

11. In the result,

(i) The revision petition in CRP NPD No.1614/2010, CRP NPD No.2853/2010 and CRP NPD No.2335/2012 are dismissed. No costs. The connected miscellaneous petitions are closed.

(ii) The decree and judgment dated 17.02.2010 passed in CMA (Co-operative societies) No.8/2008 to 10/2008 by the Principal District Judge, District Co-operative Cases Appellate Tribunal as well as the surcharge order dated 21.12.2001 passed in surcharge case No.14/2000/Sa.Pa.1 by the Deputy Registrar, Office of the Registrar of co-operative societies, Krishnagiri are confirmed.

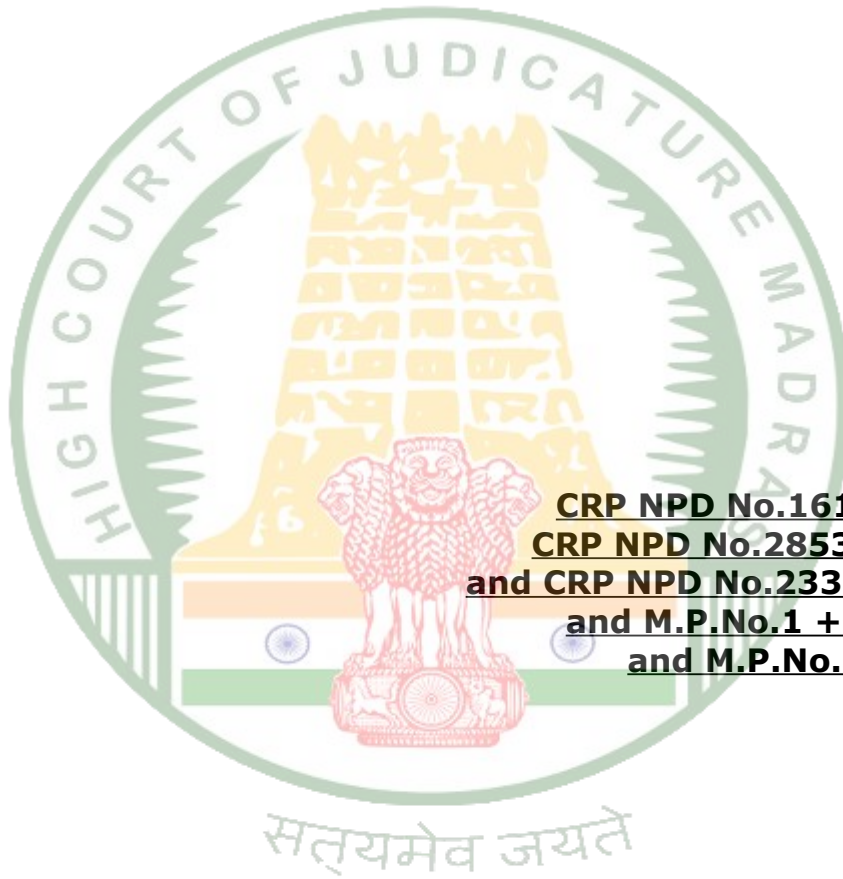
10.04.2019

Index : yes/no
Internet : yes/no
Speaking order/non-speaking order
mst

To

1. The Principal District Judge,
District Co-operative Cases Appellate Tribunal, Krishnagiri
2. The Deputy Registrar,
Office of the Registrar of co-operative societies, Krishnagiri.

N.SATHISH KUMAR. J.,
mst



CRP NPD No.1614/2010,
CRP NPD No.2853 of 2010,
and CRP NPD No.2335 of 2012
and M.P.No.1 +1 of 2010
and M.P.No.1 of 2012

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