IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2019

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

CRP NPD Nos.19,20,21,22 of 2010
and M.P.Nos.1,1,1 and 1 of 2010

D.Ganesan ... Petitioner

Vs.

1. The Commissioner of Sugar,
   474, Anna Salai, Chennai.

2. C.Bakkiyanathan
   Co-operative Sub Registrar/Enquiry Officer,
   Office of Directorate of Suga,
   474, Anna Salai, Chennai.

3. Special Officer/Surcharge Officer,
   Ambur Co-operative Sugar Mill,
   Vadapudupet.

4. Special Officer,
   Dharmapuri District, Co-operative Sugar Mill,
   Palacode.

... Respondents

Prayer in CRP No.19 of 2010 : Civil Revision Petitions filed under Article 227 of the Constitution of India against the order dated 11.08.2009 passed in C.M.A.No.1 of 2008 by the Principal District Judge, District Co-operative Tribunal, Dharmapuri confirming the order dated 31.03.2001 passed in Surcharge No.02 MTrM-j/m-ktp-98 by the third respondent.

Prayer in CRP No.20 of 2010 : Civil Revision Petitions filed under Article 227 of the Constitution of India against the order dated 11.08.2009 passed in C.M.A.No.38 of 2008 by the Principal District Judge, District Co-operative Tribunal, Dharmapuri confirming the order dated 31.03.2001 passed in Surcharge No.05 MTrM-j/m-ktp-98 by the third respondent.

Prayer in CRP No.21 of 2010 : Civil Revision Petitions filed under Article 227 of the Constitution of India against the order dated 11.08.2009 passed in C.M.A.No.39 of 2008 by the Principal District Judge, District Co-operative Tribunal, Dharmapuri confirming the order dated 31.03.2001 passed in Surcharge No.04 MTrM-j/m-ktp-98 by the third respondent.

Prayer in CRP No.22 of 2010 : Civil Revision Petitions filed under Article 227 of the Constitution of India against the order dated 11.08.2009 passed in C.M.A.No.40 of 2008 by the Principal District Judge, District Co-operative Tribunal, Dharmapuri confirming the order dated 31.03.2001 passed in Surcharge No.01 MTrM-j/m-ktp-98 by the third respondent.

For Revision Petitioner : Mr.P.Valliappan

For respondent No.1 to 3 : Mr.K.Vasanthanayagar
for Mr.R.Balaramesh
Spl.Gov.Pleader(Co-operative)

COMMON ORDER

These revision petitions have been filed against the order of dismissal passed in CMA No.1/2008, CMA No.38/2008, CMA No.39/2008 and CMA No.40/2008 by the District Judge, District Co-operative Tribunal, Dharmapuri confirming the orders passed by the 3rd respondent in surcharge Nos.02,05,04,01/MTrM-j/m-ktp-98 dated 31.03.2001.

2. The revision petitioner is the 2nd defendant in the surcharge proceedings and he is the Principal of the Co-operative Sugar Mill Polytechnic, Dharmapuri District. The Commissioner of Sugar, Chennai, who is the plaintiff in the said proceedings initiated surcharge proceedings No.02, 05, 04, 01 MTrM-j/m-ktp-98 against the present revision petitioner and two others namely P.K.Ranganathan and S.Aramvalarthan.

3. The charges framed against the defendants are that one Ranganathan, who was the accountant in the said Polytechnic prepared forged vouchers and misappropriated the amounts and similarly, the secretaries and cashiers were also involved in the act of misappropriation by forging signatures; disbursing meager amounts, but made entry in the cash records as if the actual amount was disbursed; returning the fees to the dropped out students, thereby misappropriated the funds of the polytechnic, which resulted in loss to the society. The revision petitioner is also implicated in the said surcharge proceedings on the ground that since he was the Principal of the polytechnic at the relevant point of time and put his initial in the vouchers prepared by the concerned staffs, he also responsible for the

said misappropriation. Accordingly, charges were framed against him and others.

4. Originally, an enquiry officer, who conducted enquiry with regard to the misappropriation committed by the defendants issued surcharge order, finding them guilty of the misappropriation. Against which, the first and 2nd defendants preferred appeals before the District Co-operative Tribunal, Dharmapuri. The Tribunal set aside the said surcharge order, vide its order dated 27.04.2000 and ordered for re-enquiry. Accordingly, as per the order of the District Co-operative Tribunal, Dharmaputi, the Surcharge Officer made an re-enquiry and then issued order under Section 87 of the Tamil Nadu Co-operative Societies Act, stating that since the revision petitioner had responsibility to maintain the affairs of the polytechnic, he also responsible for such misappropriation and found him guilty along with two other staffs of the polytechnic, who were actually found indulged in preparing the receipts namely the accountant and secretary.

5. The allegation against the defendants in respect of the alleged misappropriation of the amount is that they prepared forged

receipts and vouchers, as if the fees paid by the students were returned to them, without making any actual payment. The specific allegations against them is that one Ranganathan prepared forged receipts and vouchers and the present revision petitioner put his initial, recognizing the same and one Aramvalarthan gave permission for disbursement of the fees amounts to the students. Hence, surcharge proceedings were conducted against the defendants and the Surcharge Officer found the defendants guilty and ordered to recover the amounts from them vide order dated 31.03.2001. Against which the present revision petitioner filed the following civil miscellaneous appeals before the District Co-operative Tribunal, Dharmapuri.

(i) The appeal in CMA NO.1/2008 had been against the surcharge proceedings No.02, MTrM-j/m-ktp-98 dated 31.03.2001, ordering recovery of a sum of Rs.3,100/- from the revision petitioner and one P.K.Ranganathan and one K.A.Sethuraman.

(ii) The appeal in CMA NO.38/2008 had been filed against the surcharge proceedings No.05, MTrM-j/m-ktp-98 dated 31.03.2001 ordering recovery of a sum of Rs.650/- from the revision petitioner and one P.K.Ranganathan and M.Eswaran.

(iii) The appeal in CMA NO.39/2008 had been filed against the surcharge proceedings No.04, MTrM-j/m-ktp-98 dated 31.03.2001 ordering recovery of a sum of Rs.65,485/- from the revision petitioner and one P.K.Ranganathan and S.Aramvalarthan.

(iv) The appeal in CMA NO.40/2008 had been filed against the surcharge proceedings No.01, MTrM-j/m-ktp-98 dated 31.03.2001 ordering recovery of a sum of Rs.7,100/- from the revision petitioner and one P.K.Ranganathan and S.Aramvalarthan.

Since all the surcharges are relating to the same persons and in all the surcharge proceedings, the revision petitioner was found guilty along with other persons, who have allegedly prepared the forged bills, the first appellate court vide common judgment dated 11.08.2009, dismissed all the appeals and confirmed the orders passed by the Surcharge Officer, the 3rd respondent herein. Against which, the present revision petitions have been filed.

6. The learned counsel appearing for the revision petitioner would submit that the revision petitioner is only a Principal of the polytechnic and there is no allegation against him for any of the misappropriation and forgery of the alleged bills. His further contention is that only the Secretary, accountant and cashier are responsible for the misappropriation, at the relevant point of time and the revision petitioner being the Principal of the polytechnic, he put his initial in those prepared bills. Hence the findings of guilty of the revision petitioner by the Surcharge Officer does not arise, as there is no willful negligence on the part of the revision petitioner. In order to fasten the liability under Section 87 of the of the Tamil Nadu Co-operative Societies Act, it must be established that the revision petitioner acted willfully and negligent. Therefore, when the other staffs, who were accountant, secretary and cashier have committed some misappropriation, merely because the revision petitioner being the Principal of the polytechnic put his initial on the receipts prepared by the staffs, he cannot be held responsible under the surcharge. Hence, he submitted that the surcharge proceedings are not maintainable against revision petitioner and prayed for allowing the revision petition.

7. Whereas, the learned counsel for the first respondent contended that the surcharge proceedings have been conducted properly and the Surcharge Officer clearly found that the Principal also responsible for such misappropriation, since he had responsibility to look after the affairs of the college. Merely because the receipts were prepared by other staffs, the same will not relieve the responsibility of the revision petitioner and hence prayed for dismissal of the revision petition.

8. I have perused the records. On perusal of the surcharges framed against the parties clearly indicates that one P.K.Ranganathan prepared forged bills, as if, fees had been returned to the students and the bills were placed to the revision petitioner, who was the Principal of the polytechnic at the relevant point of time and he put his initial in the said prepared bills. All the charges in forging the document primarily made only against the staffs i.e. accountant, secretary and cashier. Since the revision petitioner being the Principal of the polytechnic, he put his initial and thereafter, the bills were approved by the Chairman of the polytechnic These facts are not in

dispute. However, under Section 87 of the Tamil Nadu Co-operative Societies Act, surcharge proceedings were initiated against the Principal namely the revision petitioner also and he was found guilty by the Surcharge Officer. The findings of the Surcharge Officer clearly shows that though all the alleged forgery and other aspects were committed only by the concerned officers, who were given a specific duties to that aspect, the revision petitioner also responsible for that forgery on the ground that he put his initial, being the Principal of the polytechnic. Except the above, the Surcharge Officer has not found that the revision petitioner also willfully acted in the misappropriation and there is willful, deliberate negligence on his part. In the absence of any findings with regard to the willful negligence on the part of the revision petitioner for such misappropriation, merely because he was the Principal of the polytechnic, he cannot be fashioned with liability.

9. This court in its judgment in ***K.Govindasamy Vs. A.Rajamani and others reported in 2013(3) MWN (Civil) 27*** has held thus.

13. In this case, the 6th respondent has found that the *respondents 1 and 2 have caused loss to the Bank to the tune of Rs.6.20 lakhs by dealing with inoperative S.B. Accounts. Insofar as the petitioners are concerned, the finding of the 6th respondent is that they have not discharged their duties and made themselves liable for the monetary loss caused to the Bank as they have not verified the accounts before granting permission for making the payment. Thus, they are negligent in their duties. This finding of the 6th respondent was confirmed by the Tribunal by observing that the petitioners herein were negligent in discharging their duty. Thus, the only question to be decided in these Civil Revision Petitions is as to whether the act of negligence committed by the petitioners would attract surcharge proceedings under Section 87(1) of the Tamil Nadu Co-operative Societies Act or not.*

14. A bare perusal of the said provision would show that mere negligence is not enough unless such negligence is also wilful. This issue has, in fact, already been dealt with by this Court on very many occasions. In a decision reported in 1999 (3) MLJ 310 (M.SAMBANDAM VS. THE DEPUTY REGISTRAR (CREDIT) CO-OPERATIVE SOCIETIES), this Court has categorically found that the act of failure to discharge the duties enjoined upon the *petitioner therein with regard to direct scrutiny of accounts, examination of vouchers and passing of statement before he signed the minutes book cannot come within the expression "wilful negligence". This Court had in fact considered the scope of Section 71 of the Tamil Nadu Co-operative Societies Act, , 1961 which is analogous to Section 87 of the present Act and after following various decisions, this Court has held at paragraph 14 as follows:-*

"14. In the light of the above mentioned legal position, after considering the charges made against the petitioner, I am unable to accept the conclusion arrived by the respondent 1 and 3. It may be true that the petitioner failed to discharge the duties enjoined upon him with regard to direct scrutiny of accounts, examination of vouchers and passing of statement before he signed the minutes book but this failure cannot come within the expression "wilful negligence" which has been constructed as either by commission or omission, in a deliberate and reprehensible manner, with reckless callousness and with a supine indifference, without taking due care and precaution ordinarily expected from a reasonable and prudent man under those existing circumstances."

15. Similarly in another decision reported in 2009 (4) MLJ 992 (K.AJAY KUMAR GOSH AND OTHERS VS. TRIBUNAL FOR CO-

OPERATIVE CASES), the Hon'ble Division Bench of this Court considered the scope of Section 87 surcharge proceedings and found that to pass a surcharge order under Section 87 of the Tamil Nadu Co-operative Societies Act , the employees of the Co-operative Society should have done an actionable wrong either by commission or omission in a deliberate and reprehensible manner with reckless callousness and with a supine indifference without taking due care and caution ordinarily expected from a reasonable and prudent man under the existing circumstances. It is further observed therein that in the absence of such categorical finding, it is not possible to hold the employees liable with the loss caused to the Society. The Hon'ble Division Bench has passed the said order after considering various earlier decisions. The relevant portions at paragraph 19 and 20 are extracted as follows:-

"19. A detailed discussion has been made by making reference to various judgements on this aspect in another judgment reported in Sathyamangalam Co-operative Urban Bank Ltd.,Vs. Deputy Registrar of Co-operative Society and Another (1980 (2) MLJ 17, it is held thus:-

"The degree of negligence that is contemplated under Section

71(1) of the Tamil Nadu Cooperative Societies Act is not mere negligence, but wilful negligence. The word 'wilful' has not been defined in the Act. 'Wilfulness' or 'wantonness' import pre-mediation or knowledge and consciousness that an injury or loss is likely to result from the act done or from the omission to act. It imports a constructive intention as to the consequences which, entering into the wilful act, the law imputes to the offender and in this way a charge, which otherwise would be mere negligence, becomes by reason of a reckless disregard of probable consequences, a wilful wrong. The act done or omitted to be done must be intended or must involve such reckless disregard of security and right as to imply bad faith. In examining whether there is wilful negligence, it has to be seen first whether the person concerned is guilty of negligence and if so, whether the aid wilful negligence is the proximate cause of the injury or loss sustained. "

20. In the light of the decisions referred to above, it is clear that to pass surcharge order under Section 87 of the Act, appellants should have done an actionable wrong either by commission or omission in a deliberate and reprehensible manner with reckless callousness and with a supine indifference without taking due care and caution ordinarily expected from a reasonable and prudent man under the existing circumstances. In the absence of such categorical finding by the respondents, it is not possible to mulct the appellants with the loss caused to the Society."

16. In another decision made in the case of R.GANAPATHY VS. DEPUTY REGISTRAR OF CO-OPERATIVE SOCIETIES (HOUSING) TIRUNELVELI AND ANOTHER (2009 (6) MLJ 1066) a learned single Judge of this Court has held at paragraph 11 as follows:-

"11. The learned counsel for the petitioner is also right in contending that the allegations levelled against the petitioner is mere omission and not wilful omission. Section 87(1) clearly states that there shall be wilful negligence/omission and if the same is proved, surcharge proceedings can be initiated. The said issue was considered in series of decisions of this Court."

(a) In (1980) 2 MLJ 17 (Sathyamangalam Co-Operative Urban Bank Limited v. The Deputy Registrar of Co-Operative Society and another), this Court considered the scope of earlier section viz., Section 71 of the Tamil Nadu Co-Operative Societies Act, 1961, which is analogous to Section 87 of the Act, 1983 and held that mere negligence is not sufficient to initiate surcharge proceedings.

(b) A Division Bench of this Court in 1989 WLR 272 (P.Karuppiah v. The Deputy Registrar of Co-Operative Societies) considered the very same aspect and in paragraph 3 held as follows:

"3. The second aspect canvassed by the learned counsel for the appellant is that, assuming that the petitioner was cast with specific responsibility or obligation or duty with reference to the remittances and withdrawals, yet, the alleged acts and omissions with which the appellant was charged, could not be said to have

been tainted with 'wilful negligence', which has been construed by pronouncements of the Court as meaning something done either by commission or omission, in a deliberate and reprehensible manner, with reckless callousness and with a supine indifference, and not by accident or inadvertence without taking due care and precaution ordinarily expected from a reasonable and prudent man under the existing circumstances. Learned counsel for the appellant took the trouble of citing before us pronouncements of a number of single Judges of this Court. Learned counsel for the appellant would submit that even in the field of inference, there is no possibility of characterising the alleged acts and omissions on the part of the appellant as tainted with 'wilful negligence'. We would have gone into this question, but we find that the answer given by us with regard to the first contention in favour of the appellant has served his purpose and we are of the view that for the present case we need not trouble ourselves with regard to this aspect. The learned single Judge, we find, has omitted to take note of the crucial aspect with regard to the casting of specific responsibility or duty or obligation on the appellant with regard to remittances and withdrawals. As we have already pointed out, there is no material evidence exposed in this case, showing that position. In the absence of the said position being made out against the appellant, it is not possible to sustain the proceedings which culminated in the mulcting of the liability on the appellant. Taking note of this feature, we are obliged to interfere, in writ appeal and accordingly the writ appeal is allowed, the order of the learned single Judge is set aside and the writ petition W.P.1955 of 1978 is allowed. We *make no order as to costs both in the writ petition and in the writ appeal."*

(c) The above decision was followed in the decisions reported in (1999) 1 MLJ 587 (Chockappan v. The Special Tribunal for Co-Op. Cases) and (1999) 3 MLJ 310 : 1999 (4) LLN 483 (M. Sambandam v. The Deputy Registrar (Credit) Co-Operative Societies, Mylapore, Madras).

(d) In 2002 WLR 198 (M.Chella Nadar v. The Deputy Registrar of Co- operative Societies, Thuckalai and post, K.K.District), the very same issue of scope of Section 87 was considered and similar surcharge proceeding was quashed.

(e) The above decisions are followed in the decision reported in (2006) 4 MLJ 86 (S.Marimuthu v. Deputy Registrar of Co-Op. Societies (Housing), Madurai Circle).

(f) Recently, a Division Bench of this Court in the decision reported in (2009) 4 MLJ 992 (K.Ajay Kumar Gosh v. Tribunal for Co-Operative Cases, Nagercoil) set aside the order of surcharge and in paragraph 20 held thus:

"20. In the light of the decisions referred to above, it is clear that to pass surcharge order under section 87 of the Act, appellants should have done an actionable wrong either by commission or omission in a deliberate and reprehensible manner with reckless callousness and with a supine indifference, without taking due care and caution ordinarily expected from a reasonable and prudent man under those existing circumstances. In the absence

of such categorical finding by the Respondents, it is not possible to mulct the appellants with the loss caused to the society."

17. Going by the decisions referred to above, it is crystal clear that mere negligence is not sufficient to hold a person responsible to initiate surcharge proceedings under Section 87 of the said Act unless such disobedience is also found to be wilful.

18. No doubt, the petitioners have acted without care and performed their duties in a casual and negligent manner. However, such negligence alone is not sufficient to hold them liable under Section 87 of the said Act, unless the same is coupled with wilful or deliberate intention to commit such negligence. As there is no finding given by the authorities below to that effect, then the principle that has been laid in the series of decisions, referred to supra, of this Hon'ble Court has to be applied to this case to hold that the proceedings under Section 87 of the said Act cannot be initiated against the petitioners in the absence of any wilful negligence on their part.

10. Similarly in a judgment in ***AR Shanmugha Murthy Vs. The Principal District Judge/Co-operative Tribunal,***

Cuddalore and 4 others reported in 2011(2) CWC 286 this court held as follows.

" 22. A Division Bench of this Court, to which I am a party, in K.Ajay Kumar Gosh and others v. Tribunal for Co-operative Cases (District Judge of Kanyakumari District), Nagercoil and another, [2009] 4 MLJ 992, while referring to the plethora of decisions on this issue, held that to pass surcharge order under Section 87 of the Act, the officer should have done an actionable wrong either by commission or omission in a deliberate and reprehensible manner with reckless callousness and with a supine indifference. It is useful to extract paragraphs [18] to [20] of the said judgment, which are as follows:

"18. Reliance was also placed on P.N.Chockappan and others v. Special Tribunal for Co-operative Cases, High Court Campus, Madras and others (1999) 1 MLJ 587 wherein it is held thus at p. 593 of MLJ: "13. In order to pass a surcharge order under Section 71(1) of the Act against a person entrusted with management of a cooperative society or an officer or a servant thereof, such person should have done an actionable wrong either by commission or omission in a deliberate and reprehensible manner with reckless callousness and with a supine indifference, without taking due care and caution

ordinarily expected from a reasonable and prudent man under those existing circumstances. In the absence of such categorical finding by the second respondent, it is not possible to mulct the petitioners with the loss caused to the society".

19. A detailed discussion has been made by making reference to various judgments on this aspect in another judgment reported in Sathyamangalam Cooperative Urban Bank Ltd. v. Deputy Registrar of Cooperative Society and another, (1980) 2 MLJ 17. It is held thus:-

"The degree of negligence that is contemplated under Section 71(1) of the Tamil Nadu Cooperative Societies Act is not mere negligence, but wilful negligence. The word 'wilful' has not been defined in the Act. 'Wilfulness' or 'wantonness' imports pre-mediation or knowledge and consciousness that an injury or loss is likely to result from the act done or from the omission to act. It imports a constructive intention as to the consequences which, entering into the wilful act, the law imputes to the offender and in this way a charge, which otherwise would be mere negligence, becomes by reason of a reckless disregard of probably consequences, a wilful wrong. The act done or omitted to be done must be intended or must involve such reckless disregard of security and right as to imply bad faith. In examining whether there is wilful negligence, it has to be seen first whether the person concerned is guilty of negligence and if so, whether the said wilful negligence is the proximate cause of the injury or loss

sustained."

20. In the light of the decisions referred to above, it is clear that to pass surcharge order under Section 87 of the Act, appellants should have done an actionable wrong either by commission or omission in a deliberate and reprehensible manner with reckless callousness and with a supine indifference, without taking due care and caution ordinarily expected from a reasonable and prudent man under those existing circumstances. In the absence of such categorical finding by the Respondents, it is not possible to mulct the appellants with the loss caused to the society."

11. In the case on hand also, except the allegation that the revision petitioner, who was the Principal of the polytechnic at the relevant point of time, is also responsible for the forgery, there was no materials found by the Surcharge Officer against him in respect of willful negligence. When the staffs were given special assignment to do certain acts, the higher officials have to verify the work done by the staffs. However, when the subordinates prepared a note or prepared a bill and submitted before the higher officers, except to put initial, under the impression that the bills are genuine, the higher officer has

no other role. Merely because the revision petitioner was the employer of the institute, he cannot fastened with liability. The findings of the Surcharge Officer does not show that the revision petitioner acted with willful negligence to attract the provision under Section 87 of the Tamil Nadu Co-operative Societies Act. Hence, the findings of the first appellate court as well as the surcharge order passed by the Surcharge officer, the third respondent warrant interference by this court.

12. In the result,

(i) The civil revision petitions in CRP No.19/2010, CRP No.20/2010, CRP No.21/2010 and CRP No.22/2010 are allowed. No costs. The connected civil miscellaneous petitions are closed.

(ii) The order passed by the Principal District Judge, District Co-operative Tribunal, Dharmpuri dated 11.08.2009 in CMA No.1/2008, 38/2008, 39/2008 and 40/2008 and order passed by the Surcharge Officer, the 3rd respondent dated 31.03.2001 are set aside, as against the present revision petitioner only.

02.04.2019

Index : yes/no
Internet : yes/no

Speaking order/non-speaking order
mst

To

1. Principal District Judge, District Co-operative Tribunal, Dharmapuri
2. The Commissioner of Sugar, 474, Anna Salai, Chennai.
3. C.Bakkiyanathan, Co-operative Sub Registrar/Enquiry Officer, Office of Directorate of Sugar, 474, Anna Salai, Chennai.
4. Special Officer/Surcharge Officer, Ambur Co-operative Sugar Mill, Vadapudupet.
5. Special Officer, Dharmapuri District, Co-operative Sugar Mill, Palacode.

N.SATHISH KUMAR. J.,
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