IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	DELIVERED ON
19~02~2019	27~02~2019

CORAM :

THE HONOURABLE **MR. JUSTICE N.SATHISH KUMAR**

C.R.P.(NPD).No.4466 of 2011
and M.P.No.1 of 2013

1. C. Narayanasamy ... Revision Petitioners/Appellant/ 5th Respondent

Versus

1. The Deputy Registrar of Co-op.Societies,
Coimbatore Circle,
Collectorate Complex,
Coimbatore - 18.

2. The Special Officer,
Vaiyampalayam Primary Agricultural
Co-operative Bank,
Coimbatore - 641 110. ... Respondents/Respondents/ Petitioners

Civil Revision Petition filed under Article 227 of Constitution of India against the Judgment and Decree dated 28.07.2011 made in C.M.A.No.34 of 2000 on the file of the Principal District Court, Coimbatore, confirming the order dated 19.01.2009 made in Surcharge Order (Re-enquiry)No.6/2000/Sa.Pa.1 on the file of the Deputy Registrar of Co-operative Societies, Coimbatore.

For Revision Petitioners .. Mr. N. Manoharan

For Respondents .. No appearance

ORDER

Aggrieved over the order of the Cooperative Tribunal dismissing the appeal filed by the Revision Petitioner against the Surcharge proceedings dated 19.01.2009 the present Revision came to be filed.

2. The brief facts leading to file this Civil Revision Petition is as follows:

2.(a) The Revision Petitioner was selected as President of the Vaiyampalayam Primary Agricultural Co-operative Bank. During his period it appears that he found out some deficiencies. Therefore, he brought to the notice of the same to the Joint Registrar of Co-operative Societies for conducting enquiry. Thereafter, enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act 1983, was conducted. On enquiry, it was found that by creating forged documents loss occured to the tune of Rs.40,42,105/- to the Society. It is found out in the enquiry that without granting loan to the depositors on their deposits and also Fixed Deposits and other deposits known as "Amudha Surabi Deposit" records have been created as loans have been issued to the depositors falsely thereby Rs.40,42,105/- loss to the society.

3. It is the main contention of the Department that the Respondents 1 to 4 have singed depositors receipts by forging their signatures and sanctioned loan. The Revision Petitioner being the Fifth Respondent has countersigned those bills as President. Thereby, proceedings have been initiated under Section 87 of the Tamil Nadu Co-operative Societies Act. The Enquiry Officer found that the Second, Third and Fourth Respondents forged the signatures of the depositors. They have admitted forging of signatures. However, he found that the Revision Petitioner being the President of the bank, was also responsible for such loss and levied surcharge against him jointly along with others for recovery of Rs.40,42,105/- as against which the Revision Petitioner has filed Appeal before the Co-operative Tribunal.

4. The Co-operative Tribunal dismissed the appeal on the ground that since the Revision Petitioner is the President of the Bank, he cannot plead that he has no knowledge about the forgery. As per Rule 22 of the bye-law of the Society, the President of Bank also responsible for the entire expenses, against which the present Revision came to be filed.

5. The learned counsel appearing for the Revision Petitioner submitted that in fact only at the instance of the Revision Petitioner enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act was conducted and finally found

that the Respondents 1 to 4 in the Surcharge proceedings have fabricated certain receipts in the name of the original depositors and sanctioned loans and caused loss to the tune of Rs.40 lakhs. It is the contention of the learned counsel that as per the proceedings of the Special Officer dated 10.3.1995, the entire responsibility in respect of sanctioning the loan lies on the Secretary and Second Respondent Tmt. Dhanalakshmi, besides secretary has to verify all the records every day. Merely because the President was elected for some period and put his initial in the records certified by the Secretary and others, the wilful negligence cannot be attributed on the Revision Petitioner merely because he was President of the Society. Unless the willful negligence established as against the Revision Petitioner levying of surcharge against him is not maintainable under law. Further, it is the contention of the learned counsel that the Enquiry Report under Section 81 of the Tamil Nadu Co-operative Societies Act is not submitted to the Revision Petitioner. Hence submitted that the First Appellate Court has simply dismissed the application on the basis that all the Respondents have admitted their guilt, which is not true. The Revision Petitioner never admitted his guilt before the authorities. Hence submitted that the Tribunal has not appreciated the facts and simply dismissed the application. Therefore the Revision may be allowed. In support of his contention the learned counsel relied upon the following Judgments:

1. *S. Ramadevi v. The Special Officer, Ambur Co-operative sugar Mills, Vadapudupet, Vellore*

[2016-4-L.W.460]

2. *Arignar Anna Weavers Co-opertative Society Ltd., v. State of Tamil Nadu and others.* ***[AIR 1999 MADRAS 254]***

3. *Pollachi Co-operative Marketing Society v. K.N.Valuswami and Others* ***[1994 Supp (3) Supreme Court Cases 134]***

6. There is no representation for the Respondents.

7. I have perused the entire materials. The enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act was conducted on the ground of some loans were given in the name of Amudha Surabi Deposit Scheme and Fixed Deposits for other persons not to the original depositors thereby loss has been caused to the tune of Rs.40,42,105/-. It is the contention of the Revision Petitioner that the very enquiry itself has initiated on his request to the Joint Registrar to verify the accounts that itself clearly indicates that he never acted willfully or negligently. As per the Rule and proceedings of the Special Officer only the Secretary and Accountant are responsible for sanctioning the loans. It is no doubt, in the enquiry it is found out a loss to the tune of Rs.40,42,105/- said

to have caused to the society by sanctioning loan to some third parties in the name of original depositors.

8. In this regard P.W.1 was examined. In his cross examination he has admitted that only the Secretary has created the false document and he has admitted to make loss along with Respondents 2 to 4. It is also admitted that the above loan is also approved by the Board of Members. He has also admitted that the original depositors in whose name the loans said to have been given, have not been examined. Except putting initial by the Revision Petitioner he has not signed any document. It is also admitted that only the regular employees said to have created the documents. The fact remains that no depositor or the persons said to have received the loan in the name of original depositors have been examined. The Enquiry Officer is also not found out whether the above account have been subjected to audit or not. Therefore, when the regular employees said to have made certain fabrication except Revision Petitioner putting his initial as a President has not involved in fabrication of any records. Therefore, this Court is of the view that surcharge should not be levied against him merely on the basis of the initial put by him. When the Secretary and other officials who have responsible for handling the loans, certified certain documents to be true the President who was elected for certain period, cannot be expected to make a roving enquiry whether those persons are real depositors or someone

else. Therefore, unless willful negligence has been established against the Revision Petitioner by the enquiry officer surcharge is not an automatic against the Revision Petitioner merely because he put only his initial. Except the admission by the other officials about their role in fabrication of documents, there is no materials whatsoever found against Revision Petitioner except his initial put in the documents. Therefore, in such scenario unless and until the wilful negligence has been established, one cannot be fastened with the liability under Section 87 of the Tamil Nadu Co-operative Societies Act.

9. In ***Pollachi Co-operative Marketing Society case*** (supra) the Honourable Supreme Court has held as follows:

> *"3. ... ... The word `wilfulness', it held, imported premeditation or knowledge and consciousness that an injury or loss was likely to result from the act done or from the omission to act. It imported a constructive intention as to the consequence. Quoting an earlier judgment, delivered by Pandian, j. (as he then was) in* ***Sathyamangalam Co operative Urban Bank Ltd. v. Deputy Registrar of Cooperative Societies [(1980) 2 MLJ 17]****, it held that to constitute wilful negligence, the act done or omitted to be done must involve such reckless disregard or duty as to imply bad faith. The High Court observed that the very approach of the Special Tribunal for Cooperative Cases was wrong as it had posed for answer the following question: "The main point for consideration*

would be whether the purchases were effected as per the regulation and whether the subsequent series were done in good faith and in the interest of the society." The High Court came to the conclusion that the evidence before the Tribunal and the findings arrived at by it on the basis of such evidence did not justify the legal inference that Respondents 1-14 had been guilty of wilful negligence.

4. The High Court was, in our view, right in emphasising that the degree of negligence that had gto be established under Section 71 was not mere negligence but wilful negligence and that this imported a consciousness that injury or loss was likely to arise from an act of commission or omission. The basis upon which the Tribunal considered the matter was, therefore, erroneous. Once we come to the conclusion that the test applied by the High Court was the right test, we must concur with the High Court in its finding that the evidence did not disclose the legal inference that Respondents 1-14 had been guilty of wilful negligence."

10. In ***S. Ramadevi's case*** (supra) this Court has held as follows:

"26. We are, thus, of the view that as the legal principles are quite settled, we have to only look into the application of the same in the facts of the present case. We are of the view that the appellate authority was right in coming to the conclusion that there is no willful negligence in the case of the appellant and this aspect has really not even been seriously touched upon by the learned Single

Judge. Merely because loss is caused would not suffice. The appellant is not the beneficiary. There is no such willful negligence attributed to her. This is apparent from even the enquiry report, which we have referred to aforesaid. Mere use of the words "negligence and careless with selfish motive for gain" would not suffice when actually the facts do not make out such a case. Thus, the surcharge officer certainly fell into an error in imposing the liability on the appellant. The enquiry report discussed aforesaid itself shows that it is the third respondent who is found to have taken advantage of the situation in seeking to obtain illegal gain for himself. The pay bill was prepared by the third respondent in the computer and the abstract of the department wise pay bill alone used to be furnished to the Accountant and the Chief Accountant (appellant) and signatures obtained. Thus, both of them had been signing on the department wise pay bill abstract without seeing the pay bills. The third respondent / Mr.A.Kabali, thus, took advantage of the fact that it was not possible for others to verify the cheques and test the salary list which was running into 300 pages. It is in these circumstances that the fourth respondent has been exonerated of the liability even though the abstract pay bill was required to be verified by him as an Accountant and he alone was supervising each and every matter. The cheques signed by the appellant are actually in the nature of counter-signature and the Accountant himself had been exonerated. Merely because the appellant was the head of the department, the liability could not be fastened on her as no case of willful negligence is made out."

11. It is to be noted that when the officials responsible to maintain day to day affairs of the bank have prepared certain bills, and records have been verified by others, by putting initial by the President in good faith in those records, willful negligence cannot be inferred by mere signature. Therefore, I am of the view that the levy of surcharge as against the Revision Petitioner is not maintainable as no piece of evidence available to infer that there is willful negligence on his part to loss to the Bank. Accordingly the Revision Petition is allowed. The order of the Co-operative Tribunal with regard to surcharge proceedings against the Revision Petitioner alone is set aside.

12. In the result, the Civil Revision Petition is allowed. Surcharge Proceedings against the Revision Petitioner alone is set aside. Connected M.P.is closed. No costs.

27.02.2019

Index:Yes/No
Internet:Yes/No
Speaking order/Non-speaking order
ggs.
To

1. The Principal District Judge,
   Coimbatore.
2. The Deputy Registrar of Co-operative Societies, Coimbatore.

N. SATHISH KUMAR, J.

ggs.

order in:
C.R.P.(NPD)No.4466 of 2011

27.02.2019