IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	11.07.2019
Pronounced On	09.08.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(NPD).No.982 of 2015

Mohandas .. Petitioner

vs

1.The Deputy Registrar of Co-operative Societies,
No.41, Raja Ganapathy Nagar, Vibishnapuram,
Chidambaram – 608 001.

2.The Special Officer / President,
Chidambaram Division Aided Hr.Sec School Teachers,
Co-op. Credit & Thrift Society,
Pachaiyappa's School Compound,
Chidambaram – 608 001.

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decree in CMA(CS).No.11 of 2013 dated 08.09.2014 on the file of the Principal District Judge, Cuddalore confirming the surcharge order passed by the 1st respondent in Na.Ka.No.2427/11 S.P, dated 18.09.2012.

For Petitioner	: Mr.M.S.Palaniswamy
For R1	: M/s.T.Girija, Govt. Advocate
For R2	: Mr.M.Venugopal

ORDER

The petitioner is aggrieved by the impugned order dated 08.09.2014 passed by the learned Principal District Judge, Cuddalore in C.M.A.(CS).No.11 of 2013.

2.By the impugned order, the learned Principal District Judge, Cuddalore has dismissed C.M.A.(C.S).No.11 of 2013 filed by the petitioner against order dated 18.09.2012 bearing reference Proceedings Na.Ka.No.2427 /2011-SP passed by the 1st respondent Deputy Registrar, Cooperative Societies in surcharge proceeding under Section 87 of the TamilNadu Co-operative Societies Act, 1983.

3.The petitioner was serving as a Senior Inspector/ Sales Officer with the Cuddalore District Central Cooperative Bank and was deputed as a Special Officer to oversee the 4 different cooperative societies which included the 2nd respondent society between the period 2008-2009.

4.As a special officer of the 2nd respondent cooperative society, the petitioner had sanctioned loans to persons during 08.12.2008 and 17.08.2009 who were either not members of the

2nd respondent society or were not eligible to loans from the 2nd respondent society.

5.Eight different loans were sanctioned based on the applications that were scrutinized and forwarded to the petitioner by full time Secretary Gnanasekaran, the then Secretary of the 2nd respondent cooperative society who has since deceased during the pendency of the surcharge proceeding.

6.It was alleged that the petitioner had colluded with the said Secretary thereby caused loss to the 2nd respondent society in respect of two loans for Rs.3,00,000/- and Rs.2,75,000/-. Apart from the above, it was also alleged that during his tenure, the 2nd respondent society sustained loss and no steps were taken to recover for the past dues from the borrowers/defaulters.

7.In this connection a charge memo dated 22.09.2011 was issued to the petitioner alleging collusion between the petitioner and the said secretary of the 2nd respondent and the borrowers/defaulters resulting in loss to the 2nd respondent society. The details of the alleged loss are as follows:-

Item No	Amount	Charge
1	Rs.6,00,000/- (3,00,000 x 2)	Loans given to Balamurugan and Natarajan who were not members of the 2nd respondent thrift society based on forged applications and fabricated signature by colluding with the secretary of the 2nd respondent society.
4 (b)	Rs.92,027/-	Loan for a sum of Rs.2,75,000/- sanctioned to one Antony Joseph, a member who had an outstanding payment of Rs.92,027/- for a previous loan.
5	Rs.11,51,230/-	Failure to take steps to recover the outstanding.

8.An enquiry officer was appointed to enquire into the above charges that were framed against the petitioner in the above charge memo. The other charges in the charge memo were against other Special officers and the borrowers of other loans with which this Court is not concerned.

9.The enquiry officer vide report dated 20.05.2011 found that the Secretary late.Gnansekaran and the field officer Imaiavarman guilty of cheating the 2nd respondent society and colluded that the petitioner was an accessory to the planned cheating by the duo while sanctioning loan in the name of Natarajan and Balamurugan based on forged documents and to the said Antony Josheph, who had not fully paid the existing loan when fresh loan was sanctioned

10.The 1st respondent Deputy Registrar, Cooperative Societies vide Order dated 18.09.2012 bearing reference Proceeding Na.Ka.No.2427/2011-SP confirmed the 1st and 2nd charges and dropped the 3rd Charge namely Item No.5 against the petitioner.

11.The learned Principal District Judge, Cuddalore has sustained order dated 18.09.2012 passed by the 1st respondent by dismissing appeal of the petitioner in C.M.A.(CS).No.11 of 2013 vide impugned order dated 08.09.2014. It is this order which is subjected to challenge in the present Civil Revision Petition.

12.Learned counsel for the petitioner submits that the petitioner was merely a Special Officer appointed during said period and that he was in charge of 4 different Cooperative Societies which included the 2nd respondent society and that he was not permanently posted and therefore liability arising out of fraudulent loans scrutinized and forwarded for his approval cannot be saddled on him.

13.It was submitted that the petitioner had no personal knowledge as to whether the loans that were sanctioned to the said Balamurugan and Natarajan on 13.07.2009 were on the strength of forged signatures of these 2 persons belonging to Sri Ramakrishna Vidylaya Higher Secondary School, Chidambaram Division as the loan applications contained rubber stamp of the headmaster of the said school and an endorsement by the President of the society of the governing the teachers of the aforesaid schools that they had not other dues.

14.It was further stated that the loan applications also declared the names of the two sureties and gave correct particulars of these two persons. It was further stated that even though the charges were that of collusion between the petitioner and the secretary of the association/society who has since deceased after the issue of the charge memo, the enquiry officer has not given any reason to find the petitioner guilty of collusion.

15.The 1st respondent also has not found the petitioner guilty of the collusion. He has merely held that the petitioner was responsible for the loss caused to the 2nd respondent society as he had allegedly colluded with the said Secretary.

16.It was further stated that i.e 2nd charge vide Item No.4 (b) regarding alleged loss of Rs.90,027/- was not a deliberate mistake and in any event the borrower Antony Joseph had come forward to repay the amount but was unable to pay the same as he was ailing from kidney disorder. There was no deliberate mistake.

17.Here also though the charge was that of collusion, the finding of the enquiry officer was merely fixing responsibility on the petitioner for the loss caused to the 2nd respondent society. It was further stated that though no case for collusion has been made out, in the operative portion alone it was concluded that the petitioner had colluded with the deceased secretary of the 2nd respondent society.

18.Finally, it was stated that parallel proceedings were initiated against the legal representatives of the deceased secretary of the 2nd respondent society and therefore invocation of Section 87 of the Tamil Nadu Cooperative Societies Act against the petitioner was not justified.

19.Further during enquiry under section 81 of the aforesaid Act, one Velmurugan, relatives of the deceased secretary deposed that whenever signatures were to be forged, the deceased secretary used to take his assistance to forge the signatures of the loanees to draw the money from the Central Cooperative Bank, Cuddalore.

20.Even though statements were recorded from the real accomplice namely Velmurugan and field officer Imayavarman neither any finding nor any proceedings have been initiated against him and instead the petitioner has been subjected to wrongful surcharge proceedings.

21.It was submitted that it was not possible for the petitioner as a special officer of the 2nd respondent society to scrutinise the genuineness of the applicants of the loan as he cannot meet them in person owing to multiple responsibility to oversee 3 other societies. He can only see the documents that are produced for his scrutiny before sanctioning loan.

22.Further, all the 8 loans were sanctioned by him based on the records that were put up by the deceased secretary. In fact even after the loans were sanctioned, the 2nd level scrutiny was available with the officers of the Central Cooperative Bank, Cuddalore while disbursing the cash at the time of encashing of the cheques signed by the petitioner at the banks counter.

23.Therefore, there are adequate correctives mechanism provided in the system and if any dubious person claims amounts, payments can be stopped by the bank. Under these circumstances, the learned counsel for the petitioner submitted that on facts itself it is evident that invocation of section 87 of the TamilNadu Cooperative Societies Act against the petitioner was wholly misplaced. The system had allowed unscrupulous persons to take advantage of the loop holes in the disbursement of loans by 2nd respondent society which as special officer, he could not have found out within a short tenure holding part time post of Special Officer.

24.It is submitted that the fact though the 1st respondent has concluded that it was only the secretary of the society who cheated the 2nd respondent society and misappropriated the amounts along with the field officers and therefore recovery of amount from an officer like the petitioner merely acting in the capacity of a special officer cannot be justified. Learned counsel for the petitioner relied on the following decisions of the courts:-

i. **A.Janakiraman and Another** vs **Deputy Registrar of C0-operative Societies, Kumbakonam and Another,** (2009) 6 MLJ 1051.
ii. **K.Ajay Kumar Gosh and Others** vs **Tribunal for Co-operative Cases, (District Judge of Kanyakumari District) Nagercoil and Another,** (2009) 4 MLJ 992.
iii. **S.Subramanian** vs **The Deputy Registrar of Co-operative Societies (Housing), Cuddalore & Others,** 2002-3-L.W.185.
iv. **K.Govindasamy** vs **Ms.A.Rajamani & Others,** 2013-4-L.W.249.

25.Per contra, the learned counsel for the 2nd respondent submits that the order dated 18.9.2012 of the 1st respondent bearing reference Proceeding Na.Ka.No.2427/2011 as upheld by the Principal District Judge in C.M.A(CS).No.11 of 2013 vide the impugned order dated 08.09.2014 was well reasoned and requires no interference.

26.I have considered the arguments advanced on behalf of the petitioner and on behalf of the 2nd respondent society and perused the order passed by the 1st respondent and that of the 2nd respondent.

27.Out of 3 charges that where leveled against the petitioner, the 3rd charge which is Item No.5 in the charge memo dated 22.09.2011 was dropped.

28.Thus, issue for consideration in the present Civil Revision Petition is whether the order of the 1st respondent dated 18.09.2012 bearing reference Proceeding Na.Ka.No.2427/2011 holding the petitioner responsible for the loss caused to the 2nd respondent society in respect of two loans mentioned in the other 2 charges as sustained by the Principal District Judge, Cuddalore is liable to be set aside or affirmed in the facts of the present case.

29.The finding of the enquiry officer as far as the 1st charges concerned, there is no collusion between the petitioner and the deceased secretary Gnanasekaran of the 2nd respondent society. Thus, there was no material before the enquiry officer as also before the 1st respondent to hold that the petitioner guilty of colluding with the late.Gnanasekaran the deceased secretary of the 2nd respondent society. At the same time, the 1st respondent has concluded that the petitioner was guilty of colluding with the deceased secretary Gnanasekaran of the 2nd respondent society.

30.Similarly, as far as 2nd charge vide charge No. 4 (b) is concerned for sanctioning a loan for a sum of Rs.2,75,000/- it was alleged that without recovering the past due of Rs.92,027/- [Rs.20,395/- towards the principal + Rs.71,632/- towards interest] resulted in the aforesaid loss was not on account of any the negligence on the part of the petitioner. The borrower had also agreed to pay back the amount.

31.In **Sathyamangalam Cooperative Urban Bank Ltd. v. Dy. Registrar of Cooperative Society**[(1980) 2 MLJ 17] , it was held that to constitute wilful negligence, the act done or omitted to be done must involve such reckless disregard of duty as to imply bad faith. Unless there is a finding that the respondent was guilty of wilful or deliberate negligence while sanctioning the loan, mere negligence is not sufficient to fasten the petitioner with liability in a surcharge proceeding. There are no evidence to suggest that the petitioner had colluded with either the deceased secretary Gnanasekaran of the 2nd respondent society order with the said Velmurugan.

32.In **S. Ramadevi v. Special Officer, Ambur Co-operative Sugar Mills,** 2016 SCC OnLine Mad 11328 : (2016) 4 LW 452 at page 459, it was 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.*

33.Surcharge proceedings can be sustained only where there is wilful negligence. In absence of finding that the petitioner was guilty of wilful negligence with an intention to cause loss to the 2nd respondent society, surcharge proceedings under similar circumstances have been quashed by this court. It is evident that the petitioner was merely a special officer deputed by the Cuddalore District Central Cooperative Bank and was deputed to oversee 4 different cooperative societies. There is no complicity on his part or willful neglect on his part.

34.It cannot be assumed that the petitioner would have known all the applicant’s whose loan applications were forwarded to him. He is dependent on the staffs of the societies. Therefore, at best it can be assumed that the petitioner was negligent while according approval for the loan to the said Balamurugan and Natarajan for a sum of Rs.3,00,000/- each without seeing them in person. However, he relied on the secretary who decided to cheat the 2nd respondent society.

35.These applications were sanctioned by the petitioner along with 6 other applications in respect of which there are no dues/disputes. There also the petitioner relied on the loan applications that were prepared, scrutinised and forwarded by the deceased secretary Gnanasekaran of the 2nd respondent society. Therefore, there is no wilful negligence that is discernable in the conduct of the respondent. He has also not profiteered from these loans.

36.Further, recovery proceedings have been initiated to recover amounts from the legal representative of the said

Gnanasekaran of the 2nd respondent society. Therefore, I am of the view that the petitioner has made out a case for the court to interfere with the impugned order.

37.In absence of the categorical finding that the petitioner was guilty of wilful negligence, the order of the 1st respondent as sustained by the Principal District Judge, Cuddalore vide the impugned order dated 08.09.2014 is liable to be set aside.

38.The present Civil Revision Petition stands allowed with the above observations. No cost.

09.08.2019

Index : Yes/No
Internet : Yes/No
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To

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No.41, Raja Ganapathy Nagar,
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2.The Special Officer / President,
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3.The Principal District Court,
Cuddalore.

4.The Section Officer,
V.R.Section, High Court, Madras.

C. SARAVANAN J.,

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Pre-Delivery order in

C.R.P.(NPD).No.982 of 2015

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