



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 16.07.2019
CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

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C.R.P. (NPD) (MD) No.1991 of 2010
and
M.P. (MD) No.1 of 2010 and C.M.P. (MD) No.5968 of 2019

V.Gurumoorthy :Petitioner
Vs.

1.The Special Officer,
T-825, Kumbakonam Agricultural Producers
Co-Operative Marketing Society,
Kumbakonam.

2.The Deputy Registrar of Co-Operative Societies,
Kumbakonam. :Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in C.M.A.No.43 of 2005 on the file of the Principal District Court, Thanjavur, dated 08.07.2010 confirming the order passed by the Deputy Registrar of Co-Operative Societies, Kumbakonam, in Ref. S.C.No.4/2004/Sa.Pa., dated 17.06.2005.

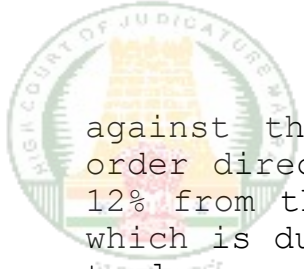
For Petitioner	: MR.M.R.S.Prabhu
For R1	: Mr.J.Gunaseelan Muthiah
For R2	: No Appearance

ORDER

This Civil revision Petition is filed as against the order passed by the learned Principal District Judge, (Co-Operative Tribunal), Thanjavur, confirming the order passed in the surcharge proceedings initiated by the second respondent as against the petitioner for recovery of a sum of Rs.3,61,833/-.

2.The brief facts that are necessary for the disposal of this Civil Revision Petition are as follows:

2.1.The petitioner, while he was serving as a Special Officer of the first respondent Society, effected certain credit sales of cotton procured by the Society. As per the By-Laws of the Society, the Special Officer was not supposed to enter into any sale transaction on credit basis. Hence, surcharge proceedings was initiated and it was found that several sales have been effected by the Society during the tenure of petitioner, as Special officer on credit basis. A sum of Rs.3,61,833/- was found due to the first respondent Society at the time of initiating surcharge proceedings



against the petitioner. Hence, the second respondent passed an order directing recovery of a sum of Rs.3,61,833/- with interest at 12% from the date of sale. Apart from recovery of the said money, which is due, a direction was also issued to recover the amount, due to loss caused to the Society on account of losing the interest in the sale price. Aggrieved by the order passed by the second respondent, the petitioner preferred an appeal before the Co-Operative Tribunal (Principal District Court), Thanjavur, in C.M.A.No.43 of 2005. The Tribunal dismissed the appeal preferred by the petitioner and confirmed the order passed by the second respondent. Aggrieved by the same, the above Civil Revision Petition has been filed by the petitioner.

3.The learned Counsel for the petitioner produced before this Court, certain documents to show that the purchaser has acknowledged his debt and undertaken to repay the amount in installments. He also relied upon some of the internal communications to show that the Society has initiated action under Section 90 of Co-operative Societies Act, 1987, to recover the money from the purchaser. The learned Counsel for the petitioner further submitted that the petitioner has recovered major portion of the amount towards the value of Cotton supplied to the dealers and that he has also obtained cheques from the purchasers, so as to enable the Society to recover the amount by resorting to the remedies under the Negotiable Instruments Act, 1881.

4.The learned Counsel also relied upon several precedents and submitted that no finding is given in this case that the petitioner is wilfully negligent. He further submitted that it is not a case of misappropriation, where, the loss is ascertained. Since the Society has already taken action to recover the amount from the purchaser of commodity, it was suggested by the learned Counsel for the petitioner that the entire amount is likely to be recovered from the purchaser and that the liability cannot be fastened before exhausting the remedies available to the Society to recover the amount from the purchaser.

5.The learned Counsel for the petitioner relied upon the judgment of this Court in the case of **M.Chella Nadar vs The Deputy Registrar of Co-Operative Societies and others**, reported in **2002 Writ L.R. 198**. What is reiterated in the said judgment is that in the absence of any finding with regard to wilful negligence, surcharge proceeding is not maintainable as against the individual person concerned. Pointing out that the degree of negligence, that is contemplated under Section 71(1) of Co-Operative Societies Act, is not a mere negligence, but wilful negligence, it is observed by this Court in many judgment that the term imports a constructive intention as to consequences and that unless the conduct of person amounts to wilful negligence, so as to describe the act done or omitted to be done, as one intended to cause loss to the Society, the negligence cannot be termed as wilful. It has been held in the above judgment as follows:

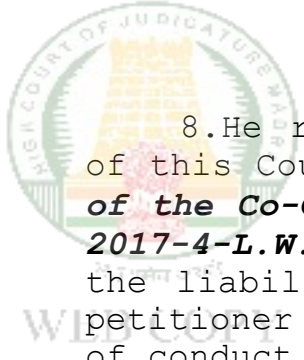


"11. In view of the legal position indicated above, there cannot be any doubt that the impugned order directing recovery from the present petitioner in the absence of any categorical finding that the petitioner was wilfully negligent in the matter relating to payment made on the basis of false vouchers submitted by the salesman-cum-clerk cannot be sustained. There is nothing to indicate that the petitioner was hand in glove with the salesman-cum-clerk. As a matter of fact the petitioner had joined duty only five days earlier to the alleged date of incident. The fact that he has been subsequently acquitted from the criminal case cannot be lost sight of in the peculiar facts and circumstances of the present case. Even though, it can be said that he had not supervised properly, it cannot be said that he was wilfully negligent in the matter."

6. The learned Counsel also relied upon the judgment of the Division Bench of this Court in the case of **S. Subramanian vs The Deputy Registrar of Co-operative Societies (Housing), Cuddalore and others**, reported in **2002-3-L.W. 185**. After elaborately discussing several precedents on the subject, the Division Bench of this Court has agreed with the Division Bench of this Court in **Jagannathan vs The Deputy Registrar**, reported in **1992 (21) L.W. 333** and held as follows:

"12. In the present case, it has to be pointed out that no finding has been recorded by the first respondent or by the third respondent to establish that the deficiency had been caused wilfully or deliberately or with a view to cause loss to the assets of the society. Nowhere, a finding has been rendered either by the first respondent or by the third respondent in their proceedings that the petitioner is guilty of wilful negligence or wantonness, nor it has been recorded that omission or commission on the part of the petitioner is deliberate, reckless or callous or loss has been deliberately to the assets of the society."

7. The learned Counsel for the petitioner also relied upon yet another judgment of learned Single Judge of this Court in the case of **S. Marimuthu and another vs Deputy Registrar of Co-Operative Societies (Housing) Madurai Circle and another** reported in **(2006) 4 M.L.J. 86** and submitted that for initiating surcharge proceedings under Section 87 of the Co-Operative Societies Act, 1987, against an employee of a Co-operative Society, the condition precedent is that there must be wilful negligence or deliberate misconduct on the part of the employee concerned.



8.He relied upon yet another judgment of learned Single Judge of this Court in the case of ***M.Anbalagan vs Enquiry Officer, Office of the Co-Operative Deputy Registrar, Musiri and others*** reported in ***2017-4-L.W.425***, to show that the petitioner cannot be fastened with the liability without due process of law. Pointing out that the petitioner is taking care of more than 14 societies and that his act of conduct cannot be termed as wilful negligence.

9.This Court is unable to agree with the submission of the learned Counsel for the petitioner by accepting his arguments that there is no wilful negligence in this case. Even after referring to the judgments relied upon by the learned Counsel for the petitioner, the learned Counsel for the petitioner has not demonstrated before this Court how the petitioner is not responsible for the loss. The petitioner, being the Special Officer, is expected to follow the rules or norms or regulations, including By-Laws. A specific provision is there in the Bye-Law of the Society preventing the Officers or persons in administration from making any credit transaction. The petitioner does not dispute the specific provision in the Bye-laws. A person, like, Special Officer, is expected to follow the Bye-Laws of the Society without any deviation. The first respondent Society is a Marketing Society consisting of persons, who are mainly farmers. The Bye-Laws would certainly establish the fact that the Society cannot indulge in credit sales. In this case, the petitioner, unmindful of specific provisions of By-Laws, effected credit sales to few individuals and took a risk. In these circumstances, this Court is unable to agree with the explanation now offered by the petitioner with regard to his role in helping the Society to recover the money.

10.By-Law No.44(1) (f) of the Society reads as follows:

"All transactions by way of sales on behalf of members shall be on the ready money system except as otherwise provided in the regulation if any framed by the board with the approval of the registrar."

11.From the By-Law, it is evident that all transactions by way of sales on behalf of members shall be only for cash. No other regulation is brought to the notice of this Court that the petitioner is Competent to make credit sales and to get approval from the Registrar later. It is contended that a resolution was passed with regard to the sale of cotton on credit basis. The resolution was marked as Ex-P3. However, no document is produced or available on record to show that the petitioner has obtained permission or direction from his Superior Officer for the sale of agricultural products on credit basis. The resolution alleged to have been passed by the Society was not with the approval of the Registrar. It is in the said circumstances, the fact that the petitioner has indulged in credit sales contrary to By-Laws and without approval of his Superior Officers, is admitted and the petitioner is therefore, guilty of proved misconduct.



12.The learned Counsel for the petitioner further pointed out some payment from the counter affidavit filed by the present Special Officer of the first respondent. In para 6 of the counter affidavit filed by the first respondent, it is stated as follows:

"6.It is submitted though the purchaser had remitted the amounts to the society periodically, an amount of Rs.3,61,833/- was not remitted by the purchaser. Of which Rs.60,000/- was recovered subsequently. Hence an amount of Rs.3,01,833/- could not be recovered till date."

13.Since the money recovered by the Society during the pendency of the proceedings is relevant to fix the quantum, that is recoverable from the petitioner, the statement of the learned Counsel for the petitioner and the first respondent is accepted. Hence, a sum of Rs.60,000/- has to be adjusted out of the sum payable by the petitioner, as per the direction of the second respondent.

14.As a result, this Civil Revision Petition is dismissed with a slight modification that and the recovery proceedings as against the petitioner shall be for the quantum after deducting a sum of Rs.60,000/- alleged to have been paid by the petitioner during the pendency of the proceedings. The petitioner is liable to pay only a sum of Rs.3,01,833/- along with interest as per the direction of the Tribunal. It is also made clear that in case, the Society is able to recover any amount from the purchaser of the commodities, which is subject matter of surcharge proceedings, the same shall also be given credit towards the amount payable by the petitioner under the surcharge proceedings. The Civil Revision Petition is dismissed subject to the above modification regarding the quantum of money recoverable from the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

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Sub Assistant Registrar(CS)

To

1.The Principal District Court, Thanjavur.

2.The Deputy Registrar of Co-Operative Societies,
Kumbakonam.

+1cc to Mr.J.GUNASEELANMUTHIAH ,Advocate, SR.No.76018

+1cc to THE SPL.GOV.T.PLEADER SR.NO.75763

cmr

C.R.P. (NPD) (MD) No.1991 of 2010

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