



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.08.2019

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (MD) (NPD)No.2692 of 2010

and

M.P. (MD)No.3 of 2010

WEB COPY

A.Chellapandian

:Petitioner/Appellant
Respondent

vs.

1.The Deputy Registrar,
Co-Operative Societies,
Kovilpatti.

:Respondent/1st Respondent/
Inquiry Officer

2.P.Jothibas

3.S.Balasubramanian

4.K.Dhanalakshmi

:Respondents/Respondents
Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order, dated 30.06.2009 in C.M.A.(CS)No.13 of 2005 on the file of the Principal District Court, Tuticorin, which confirmed the order, dated 22.03.2004 in Tha.Va.No.2 of 2003-04 passed by the Deputy Registrar, Co-Operative Societies, Kovilpatti.

For Petitioner

:Mr.B.Rajesh Saravanan

For R1

:Mr.J.Gunaseelan Muthiah

R2 to R4

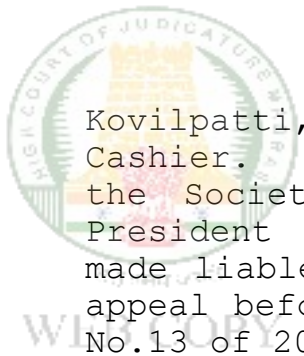
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ORDER

This Civil Revision Petition is preferred by the revision petitioner/President of a Co-Operative Society, as against the order passed by the Principal District Court, Tuticorin, in CMA (CS)No.13 of 2005, preferred by the revision petitioner, as against the surcharge proceedings initiated by the first respondent making the revision petitioner liable for certain financial loss caused to the Society on account of irregularities.

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

2.1.On the basis of an enquiry, that was initiated under Section 81 of Co-Operative Societies Act, certain irregularities were found and surcharge proceedings were initiated against the President of the Society, known as, General Co-Operative Society,



Kovilpatti, and other office bearers, namely, Secretary, Manager and Cashier. The revision petitioner was made liable as President of the Society, having failed to discharge his duty as a prudent President along with others. Though the revision petitioner was made liable under several heads, the revision petitioner filed an appeal before the Principal District Court, Tuticorin in C.M.A.(CS) No.13 of 2005.

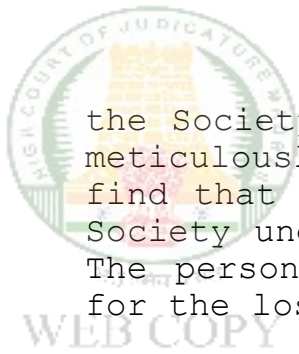
2.2.The lower Court accepted the case of the revision petitioner with regard to many other charges. As regards, Charge Nos.2 and 5 (As categorised in the surcharge proceedings), the revision petitioner was held liable along with other persons. The second charge relates to loss caused to the Society on account of loss of interest. The allegation is that the Secretary of the Society has misappropriated a sum of Rs.1,60,000/- by creating records, as if the said amount was paid to landlords of premises, taken by the Society for running liquor shops. Though the Secretary of the Society has paid the amount misappropriated by him, the Society still incurred a loss by way of losing interest for the amount misappropriated by the Secretary.

2.3.In Charge No.5, the allegation is that the President has given permission to the Secretary to spend a sum of Rs.5,300/- to celebrate the Honourable Chief Minister's visit to Collector Office at Tuticorin. It is contended by the revision petitioner that he never gave permission to the Secretary to spend the said sum of Rs.5,300/- for buying crackers and to give advertisement in the newspapers.

2.4.As regards, the second charge, the allegation is that the revision petitioner has failed in his duty to prevent the misappropriation at the appropriate time. With regard to 5th charge is concerned, the allegation is about permitting the Secretary to spend a sum of Rs.5,300/- on the date when Honourable Chief Minister of Tamil Nadu visited the Collector Office. Admittedly, no document was produced by the first respondent about any written permission granted by the revision petitioner to spend a sum of Rs.5,300/-

3.Though the first respondent and the Tribunal has recorded a finding that the revision petitioner is guilty of negligence, the reading of entire order will not disclose that the Court has applied its mind and held that the negligence was wilful. Regarding the second charge, the amount was repaid to the Society. The loss is only on account of losing interest for the amount misappropriated by the Secretary of the Society. The Secretary of the Society is in-charge of day-to-day affairs.

4.In this case, the Secretary has misappropriated a sum of Rs.1,60,000/- by making entries in the accounts, as if he has paid the rental advance to few persons. The non-payment of such advance could be verified only when enquiry is conducted. The President of



the Society would not have ascertained the misappropriation even by meticulously examining the accounts. Hence, this Court is unable to find that the petitioner is responsible for the loss caused to the Society under Charge No.2. No wilful negligence can be attributed. The person who is found guilty of misappropriation is also liable for the loss by loosing interest.

5.With regard to Charge No.5, the first respondent and the lower Court has presumed that the petitioner has given permission to the Secretary to spend a sum of Rs.5,300/-. However, there is no document or materials to substantiate that the petitioner had permitted the Secretary to spend a sum of Rs.5,300/- to celebrate Honourable Chief Minister's visit to Collector Office. Since the liability of the Secretary is not in dispute, no motive or wilful negligence can be attributed to the revision petitioner, so as to make him liable.

6.Having regard to the facts and circumstances of this case, this Court is inclined to allow this petition. Accordingly, this Civil Revision Petition is allowed and the order in C.M.A.(CS)No.13 of 2005 passed by the Principal District Court, Tuticorin, dated 30.06.2009, is set aside. The revision petitioner is not liable under Charges Nos.2 and 5. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Ad-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Principal District Court, Tuticorin.

2.The Deputy Registrar, Co-Operative Societies,
Kovilpatti.

+1 CC to Mr.B.RAJESH SARAVANAN, Advocate SR-79363.

+1 CC to SPL GP SR-79411.

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