IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P (NPD).No.2666 of 2018
and
C.M.P.No.15882 of 2018

M.Namasivayam ... Petitioner

Vs.

The Deputy Registrar,
Special Officer,
Salem Urban Co-operative Bank,
Office Urban 405, First Agraharam,
Salem. ... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and decretal order dated 22.03.2018 made in C.M.A.C.S.No.6 of 2012 on the file of the Principal District Judge at Salem.

For Petitioner : Mr.Krishna Prasad.R

For Respondent : Mr.P.Jagadesan

O R D E R

This Civil Revision Petition is filed as against the judgment and decree passed in C.M.A.C.S.No.6 of 2012 dated 22.03.2018 on the file of the learned Principal District Judge, Salem, thereby imposing punishment on the petitioner herein.

2. The learned counsel for the petitioner submitted that when the respondent passed an order under Section 87 (1) of the Tamil Nadu Co-operative Societies Act, 1983, there should be a clear finding that the Bank had suffered loss due to wilful negligence of the petitioner. The impugned order is passed on the basis of the inspection report dated 24.09.2011. It was not at all furnished to the petitioner before passing the impugned order. There were five charges in which only four charges were proved and the fifth charge is not proved by the Enquiry Officer for the reason that no loss occurred to the respondent's Bank. The respondent failed to file any material proof to prove the charges as against the petitioner and as such, the charges itself was not proved as contemplated under the Act and the order cannot be sustained as against the petitioner herein. The Enquiry Officer filed his report and concluded that the respondent had not

suffered any loss due to the issuance of jewel loans by the petitioner. Since all the loans disbursed by the petitioner were repaid by own wish. In so far as the other charges are concerned, the petitioner disbursed the loan only based on the procedure followed by the jewel appraiser and the members who want to take the jewel loans can directly approach the jewel appraiser and based on the calculation in respect of weight of the jewels, the loan amount is fixed by the jewel appraiser and as such, the petitioner being a Manager of the Bank disbursed the loan. Therefore, the entire liability cannot be foisted on the petitioner herein. In support of his contentions, the learned counsel for the petitioner relied upon the judgment of this Court reported in 2016-4L.W.452 ***(S.Ramadevi -vs- The Special Officer, Ambur Co-operative Sugar Mills, Vadapudupet)*** in which it has been 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 fastened on her as no case of willful negligence is made out."*

3. Per contra, the learned counsel for the respondent submitted that when the petitioner was working as Manager in the Salem Central Co-operative Bank, Gorimedu Branch. He had given multiple membership to one person and sanctioned loan for a sum of Rs.80,24,000/-. Likewise, he also disbursed loan to one Kannan by his nine membership for a sum of Rs.35,50,500/-. In the name of Senthilkumar, he disbursed 11 loans to the tune of Rs.40,11,000/-. Thereby, he had exceeded the loan limit of Rs.5,00,000/- to each member. That apart, he weighed the jewels with stones and highly valued the jewels and disbursed the loan to the tune of Rs.1,70,14,000/- instead of 1,09,34,500/-. On the basis of the allegations, the petitioner was issued show cause notice and by the explanation dated 05.12.2011, the petitioner submitted his explanation. In fact, in the

explanation, he categorically admitted that in one person name, he disbursed 22 loans to the tune of Rs.80,24,000/- within a short span of 20 days time. After issuance of show cause notice, he himself deposited the entire loan amount within a week. Likewise, he admitted the disbursement of the loan to other persons and collection of the same. Having not satisfied with the explanation submitted by the petitioner, the Enquiry Officer conducted enquiry and reported that among five charges, four charges were proved and fifth charge in respect of loss to the Bank was not proved. On the strength of the enquiry report, the respondent passed order and thereby, reverted the petitioner from the post of Manager to the Assistant, stopped increments and ordered to recover the loss, if any to the Bank. Since the said order was passed under Section 87(1) of the Tamil Nadu Co-operative Societies Act, the petitioner filed a Civil Miscellaneous Appeal before the Tribunal challenging the order passed by the respondent. The Co-operative Tribunal concluded that the appeal is maintainable and confirmed the order passed by the respondent in respect of the departmental proceedings.

4. Heard the learned counsel for the petitioner as well as the learned counsel appearing for the respondent.

5. While the petitioner was working as Manager, Salem Central Co-operative Bank, Gorimdeu Branch, he was charged with five charges that he sanctioned loan to the tune of Rs.80,24,000/- to one person on his 22 memberships, he disbursed the loan to the tune of Rs.35,50,500/- to one person viz., Kannan on his nine memberships and disbursed to the tune of Rs.40,11,000/- to the personal loan one Senthilkumar on his 11 memberships, thereby exceeding the loan limit of Rs.5 lakhs to each member. Further, charged that he disbursed 45 jewel loans to the weight of 12199.300 grams without deducting the stones weight and disbursed loan to the tune of Rs.1,70,14,000/- instead of Rs.1,09,34,500/-, without verifying the deduction and also failed to check the total numbers of jewels pledged and weight. He submitted explanation and it is revealed that the loan amounts disbursed to the three persons on their memberships were collected within a span of 10 days time viz., from 14.09.2011 to 24.09.2011. Therefore, not being satisfied with the explanation submitted by the petitioner, the enquiry was ordered and the Enquiry Officer conducted detailed enquiry. After completion of enquiry, the Enquiry Officer filed his report and concluded that the charges 1 to 4 were proved and the charge 5 is

not proved.

6. On a perusal of the report submitted by the Enquiry Officer, it reveals that all the materials evidence produced and even as per the explanation submitted by the petitioner herein, all the four charges were categorically proved and thereby, the huge amount was misused by the petitioner herein. Though the loan amounts were deposited to the credit of the Bank within a span of 10 days time and no loss caused to the Bank, the act of the petitioner will amount to cheating the Bank. Fortunately, it was found in time and immediately all the loan amounts were deposited to the credit of the respective loan account. The judgment relied by the learned counsel for the petitioner in this regard is not helpful to the case on hand. Since the above judgment is completely in a different set of facts, that too arising out of the surcharge proceedings.

7. That apart, the object of the Bank is to disburse jewel loan to the poor people at the subsidy rate of interest provided by the Government to meet out their livelihood. Whereas, the petitioner disbursed the loan amounts to three selected persons. There is absolutely, no explanation from

the petitioner and it defeats the object of the Bank. Therefore, the Court below rightly dismissed the petition and confirmed the judgment passed by the respondent herein. In view of the above, this Court finds no merits in this petition and no infirmity or illegality in the judgment passed by the Court below.

8. Accordingly, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

09.07.2021

Speaking/Non-speaking order
Index : Yes/No
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To

1. The Principal District Judge, Salem.

2. The Deputy Registrar,
Special Officer,
Salem Urban Co-operative Bank,
Office Urban 405, First Agraharam,
Salem.

3. The Section Officer,
V.R. Section, High Court of Madras.

G.K.ILANTHIRAIYAN,J.

Kv

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