

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(NPD)No.821 of 2018
and C.M.P.No.4513 of 2018

C.L.S.P.L.No.2 Keelakalpoondi
Primary Agricultural Co-operative
Bank Ltd., Represented by its President,
Keelakalpooondi Village & Post,
Thittakudi Taluk,
Cuddalore District. ... Petitioner

1. M.Sellapillai
2. The Deputy Registrar,
Co-operative Societies Cuddalore District,
Cuddalore. ... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated passed in C.M.A(CS)No.33 of 2013 dated 14.12.2017 passed by the learned Principal District Judge, Cuddalore and to restore the order passed by the second respondent.

For Petitioner : Mr.G.Ilamurugu

For Respondents

For R1 : Mr.C.Prakasam

For R2 : Mr.A.E.Ravichandran
Government Advocate (CS)

ORDER

This Civil Revision Petition is filed as against the fair and decreetal order dated 14.12.2017 passed by the learned Principal District Judge, Cuddalore, in C.M.A(CS)No.33 of 2013, thereby allowing the appeal and set aside the surcharge order passed by the second respondent.

2. The learned counsel appearing for the petitioner would submit that when the first respondent was working as secretary in the petitioner's society during the period 1994-99 had committed serious illegality in the society affairs and he misappropriated the society fund to the tune of Rs.23,92,730/- and caused loss to the society. Therefore, the second respondent herein ordered enquiry under Section 81 of the Tamil Nadu Co-operative Society Act, 1983 (hereinafter referred to as "TNCS Act") and on the enquiry he was found some illegalities and recommended for surcharge

proceedings and criminal prosecution. In pursuant to the enquiry report, the first respondent was issued with notice under Section 87 of the TNCS Act. After receipt of the explanation, the second respondent initiated surcharge proceedings and on 28.09.2000, the surcharge order was passed against the first respondent. Aggrieved by the same, the first respondent filed appeal before the Principal District Judge, Cuddalore (hereinafter referred to as “Co-operative Tribunal”) in C.M.A.(CS).No.6 of 2001 and the same was allowed and remanded the matter back to the second respondent for fresh consideration after affording all the opportunities to the first respondent.

2.1. As directed by the Co-operative Tribunal, the second respondent issued summons on various occasions to the first respondent. On receipt of the same, the first respondent sought adjournments on every occasions on the ground that he filed writ petition in W.P.No.23071 of 2005 before this Court seeking permission for him to engage an Advocate to defend his case in the surcharge proceedings. The said writ petition was dismissed and the petitioner sought time to file appeal as against the order passed by this Court in the writ petition. Even after dismissal of the said

writ petition against the first respondent repeatedly asked for time to engage Advocate to defend the proceedings before the second respondent. Therefore, the second respondent had no other option and passed surcharge order on the available materials on records under Section 87 of the TNCS Act on 20.02.2013. Aggrieved by the same, the first respondent preferred an appeal in C.M.A.(CS)No.33 of 2013 before the Co-operative Tribunal and the same was allowed and remanded back to the second respondent by an order dated 07.02.2005, only on the ground that there is a violation of statutory provisions and against the principles of natural justice and no fair opportunities given to the first respondent.

2.2. He further submitted that in pursuant to the direction issued by the Co-operative Tribunal in C.M.A.(CS).No.6 of 2001 dated 07.02.2005, by remanding back for fresh consideration, the second respondent on various occasions issued summons to the first respondent for enquiry up to the year 2013. Finally on 08.02.2013, the second respondent issued summons to the first respondent for the enquiry to be conducted on 20.02.2013 and the summons was duly served on the first respondent and he

appeared before the second respondent and requested time for enquiry for one or other reasons. After dismissal of the writ petition filed by him before this Court, he submitted representation on 14.04.2012, stating that he intended to file appeal as against the writ order and requested to stop the enquiry proceedings. Further on 26.04.2012 and 31.05.2012, he repeatedly sent representation and requested the second respondent to permit him to engage an Advocate to cross-examine the witnesses and also to conduct the case on behalf of the first respondent through his advocate.

2.3. He further submitted that the first respondent submitted his last representation on 16.10.2012 with the same request and it was duly received by the second respondent by 18.10.2012. Therefore, the enquiry under Section 87 of the TNCS Act was pending from 15.03.2005 onwards till 08.02.2013, at the request of the first respondent. Finally on 20.02.2013, the second respondent passed surcharge order. Unfortunately, the Co-operative Tribunal without considering the above facts and also without considering the loss caused by the first respondent to the tune of Rs.23,92,730/- allowed the appeal on the ground that principles of natural justice is violated.

Therefore, he prayed to set aside the order passed by the Co-operative Tribunal and to allow this Civil Revision Petition.

3. Per contra, the learned counsel appearing for the first respondent submitted that the second respondent already passed surcharge order on 28.09.2000 and the same was set aside by the Co-operative Tribunal in C.M.A(CS)No.6 of 2001 on the ground that the first respondent was not given opportunity of hearing and opportunity to cross-examine the witnesses and remanded back for fresh enquiry. The Co-operative Tribunal specifically directed the second respondent to give sufficient opportunity and conduct enquiry under Section 87 of the TNCS Act. Even then, the second respondent again committed the same mistake and without affording any opportunity of hearing to the first respondent, passed the surcharge order. Therefore, the Tribunal rightly set aside the surcharge order and it doesn't warrant any interference by this Court.

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3.1. He further submitted that in pursuant to the enquiry report submitted under Section 81 of the TNCS Act, there are three proceedings

were initiated as against the first respondent. Firstly, a disciplinary proceeding was initiated as against the first respondent in which he was exonerated from all the charges. Secondly, a criminal case was lodged as against the first respondent in which, he was discharged from all the offences. Thirdly, the second respondent passed surcharge order to recover a sum of Rs.23,92,730/-. For the very same charge, there are three proceedings were initiated, in which two other proceedings quashed as against the first respondent. Therefore, the surcharge proceedings also has no legs to stand further. Hence, the Co-operative Tribunal rightly set aside the same and he prayed for dismissal of the present Civil Revision Petition.

4. Heard Mr.P.Manikandan, learned counsel appearing for the petitioner, Mr.C.Prakasam, learned counsel appearing for the first respondent and Mr.A.E.Ravichandran, learned Government Advocate (CS) appearing for the second respondent.

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5. While the first respondent was working as secretary in the petitioner Society, he misappropriated to the tune of Rs.23,92,730/- and caused loss to the petitioner Society from 01.11.1994 to 25.10.1999. Therefore, on 04.11.1999 inquiry was ordered under Section 81 of the TNCS Act by the second respondent. In fact, on the said enquiry the first respondent admitted his illegality and undertook to pay the said amount before the enquiry officer. On the basis of the enquiry report filed under Section 81 of the TNCS Act, a criminal complaint was lodged as against the first respondent and the same was registered in Crime No.2 of 1999 on the file of the Inspector of Police, Economic Offences Wing, Cuddalore.

6. Simultaneously, the second respondent initiated surcharge proceedings under Section 87 of the TNCS Act and the first respondent was issued show cause notice on 15.02.2000. On the same time, disciplinary proceeding was initiated as against the first respondent and he was suspended from service. On receipt of the show cause notice, the first respondent submitted his explanation. Without satisfying the explanation submitted by the first respondent, the second respondent issued summons to

the first respondent to conduct enquiry under Section 87 of the TNCS Act. Simultaneously, the second respondent issued summons to all the witnesses and their statements were recorded in the form of affidavit and sufficient opportunities were given to the first respondent to defend his case.

7. Even then, the first respondent failed to explore the opportunities given to him and the second respondent passed the surcharge order on 28.09.2000. It was challenged before the Co-operative Tribunal and it was set aside by an order dated 07.02.2005 in C.M.A(CS).No.6 of 2001, and remanded back to the second respondent for fresh enquiry under Section 87 of the TNCS Act. As directed by the Co-operative Tribunal, the second respondent issued summons repeatedly from 15.03.2005 to 08.02.2013 to the first respondent called upon him to attend the enquiry. The first respondent dragged the surcharge proceedings for the period of eight years for one or some other reasons and failed to defend his case before the second respondent.

8. In the meanwhile, the first respondent seeks permission before this Court by way of writ petition in W.P.No.23071 of 2005 to engage a counsel before the second respondent to defend his case. It was dismissed by this Court by an order dated 13.02.2012, with liberty to appear before the enquiry officer for the enquiry initiated under Section 87 of the TNCS Act and to establish his case. Even thereafter, the first respondent did not appear before the second respondent and keep on sending representation seeking permission to engage an Advocate to defend his case before the second respondent. Final representation of the first respondent dated 16.10.2012 was received by the second respondent on 18.10.2012 and directed the first respondent to appear before the second respondent for enquiry. Even then, the first respondent failed to appear before the second respondent as such, the second respondent had no other option passed the order under Section 87 of the TNCS Act, on 20.02.2013.

9. On perusal of the order passed under Section 87 of the TNCS Act, the allegations are that the first respondent fabricated bogus FDS and received amount from nineteen members of the society to the tune of

Rs.16,17,000/- in which he repaid only a sum of Rs.4,10,000/-. He also falsified the account in the name of the six members by using their signature obtained in the original FDS as if the members obtained loan and swindled the amount to the tune of Rs.3,40,000/-. He also falsified the account in the name of the eight member by using their signature obtained in colour Xerox FDS as if they received loan and swindled a sum of Rs.4,72,500/-. He received loan amount from 12 members and failed to credit the same to the society account to the tune of Rs.3,01,230/-. He maintained false account as if he disbursed loan in excess than that of actual disbursement and thereby swindled to the tune of Rs.72,000/-. All these charges are proved from the witnesses and the second respondent passed surcharge order as against the first respondent.

10. Unfortunately, the Co-operative Tribunal without considering the above facts only on the ground that there is violation of statutory provisions and principles of natural justice, set aside the surcharge order passed by the second respondent. The first respondent misappropriated huge sum of money belonged to the Society and it is nothing but public fund.

Though the first respondent was suspended from service in the disciplinary proceedings and also discharged from the criminal case on technical ground, he is liable to repay the amounts which were misappropriated by him as per the surcharge order. The first respondent successfully drag the surcharge proceeding for the period of eight years from the date of remand. In fact, the second respondent passed surcharge order in the year 2000 itself and till now the first respondent successfully evaded from the surcharge order. It shows the conduct of the first respondent and as such, it would not amount to violation of principles of natural justice and it would not amount to any violation of the provisions as contemplated under the TNCS Act.

11. In view of the above discussions, the order passed by the Co-operation Tribunal is perverse and liable to be set aside. Accordingly, the order dated 14.12.2017 passed by the learned Principal District Judge, Cuddalore, in C.M.A(CS)No.33 of 2013 is hereby set aside. The petitioner Society is at liberty to execute the surcharge order dated 20.02.2013 passed by the second respondent under Section 87 of the TNCS Act in the manner known to law.

12. Accordingly, this Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Internet : Yes

Index : Yes/No

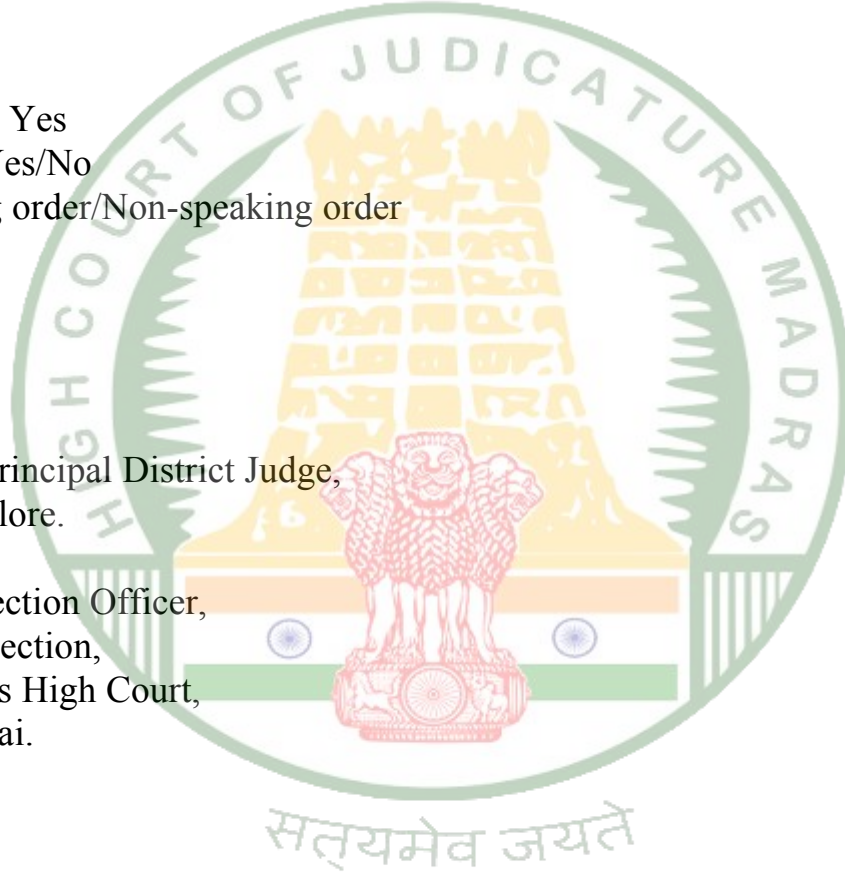
Speaking order/Non-speaking order

rts

To

1. The Principal District Judge,
Cuddalore.

2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

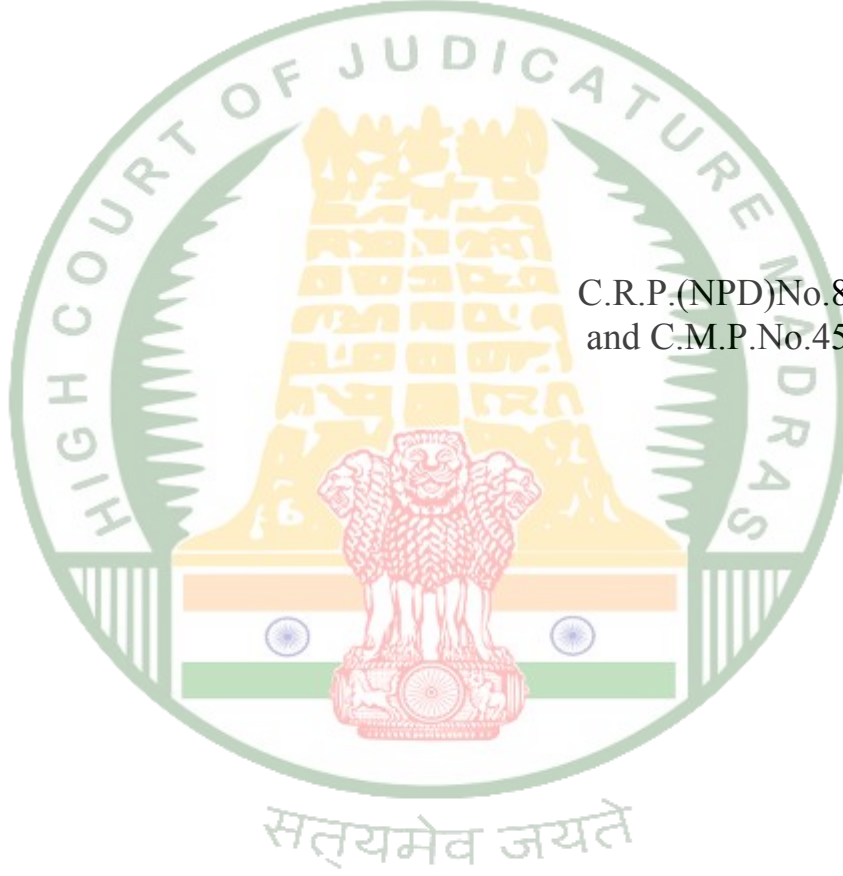


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G.K.ILANTHIRAIYAN, J.

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