



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.09.2021

CORAM

THE HON'BLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

C.R.P (NPD) (MD) No. 2665 of 2012

and

M..P (MD) No.1 of 2012

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1. The Deputy Registrar of Co-operative Societies
Thanjavur
Rep.by its Deputy Registrar
 2. M/s. Thanjavur Consumer Co-operative
wholesales Stores
Rep.by its Special Officer,
Thanjavur
- ...Petitioners/Respondents

Vs.

- 1.S.Regupathy
 - 2.P.Adhinarayanan
- ...Respondents/Appellants

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the judgment and decree passed in CMA No.11 of 2006 by the learned Principal District Judge, Thanjavur dated 21.07.2011

For Petitioners : Mr.M.S.Sureshkumar
for Mr.R.Velmurugan

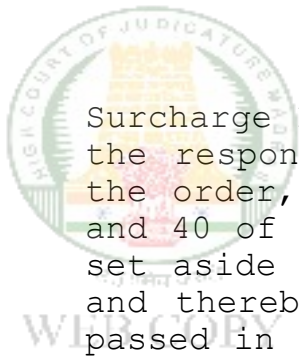
For Respondents : Mr.K.Vaithilingam

O R D E R

The Civil Revision Petition has been filed against the order passed by the learned Principal District judge, Tanjore in CMA No.11 of 206 dated 21.07.2011 reversing the order passed by the first petitioner in surcharge proceedings in Na.Ka. No.9896/2005, dated 13.02.2006.

2. The brief facts of the case are as follows:

The respondents were employed at T.878 Tanjore Consumer Co-operative WholeSale Stores during the period 1998-1999. They committed financial irregularities and thereby investigation was referred by the Special Investigation Team under Section 81 of the Tamil Nadu Co-operative societies Act, 1983 and the Special Investigation Team has filed a report stating that the respondent has caused a loss of Rs. 2,41,734.95 and based on the report



Surcharge Proceedings under 87(1) of the Act were initiated against the respondents and surcharge order was passed 28.02.2003. Against the order, the respondent has filed CMA Nos.32 of 2003, 33 of 2003 and 40 of 2003 and the appellate Court by an order dated 16.02.2002 set aside the order and remitted back the matter for fresh enquiry and thereby a fresh enquiry was conducted and surcharge order was passed in respect of the petitioners and two other persons, whereby an amount of Rs.2,07,225.95 was directed to be recovered as penalty from the present respondents, against which the respondents had filed CMA(MD) No.11 of 2006 and the appellate Court had set aside the order against which the present revision has been filed.

3. The learned counsel would submit that the first respondent was working as a Manager and he was also holding additional charge of kovilavalivanni centre and during the period the Helper and the Movement Clerk had committed fraud and misappropriation of Rs.2,10,077.35. He would further submit that the first respondent is liable to detect the fraud and also liable for maintenance, finance and accounts, stock movement of control commodities and the said Ravichandran who was under the control of the first respondent has misused the powers and issued cash bills striking the word credit by himself and sent remaining copies of the bills without striking the word credit, but the first respondent who is liable to check the fair price shop accounts and reconcile the account of the Centre has failed to do so which caused a loss to the society. He would also submit that the said Ravichandran had misappropriated a sum of Rs.5,24,522.95 and it is a loss to the second petitioner/ society and the respondent and other had paid a part of surcharge proceedings to the tune of Rs. 317297.05 and had accepted the deficiency. He would further submit that though the second petitioner had produced enough evidence before the appellate and presented the case with facts and records the appellate Court had erroneously allowed the appeal.

4. The learned counsel for the petitioner would submit that the first respondent being the Manager of the Society is liable to maintain the accounts of the Society, operating bank accounts, lifting and controlled the commodities from Civil Supply godowns and supply them to Fair price Shop through Primary Co-operative Agricultural Bank and Societies and should collect the cheques from the Society and should have deposited the same in the bank for collection of the amount and it is the duty of the second respondent to supervise the accounts of the Rural Consumer Scheme Centre distribution and movement of essential commodities, whereas he had failed to exercise due caution and thereby allowed the said S.Ravichandran to commit misappropriation and thereby caused loss to the society and due to the wilful and negligent act of the respondent the Society had suffered a financial loss to the tune of Rs.2,07,225.90 /- whereas the appellate court had erroneously allowed the appeal.



5. The learned counsel for the respondent would submit that the appellate Court rightly finding that the Enquiry Officer had not rendered any finding with regard to the wilful negligence or of the deficiency caused wilfully or deliberately had rightly allowed the appeal.

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6. The allegation against the respondents is that they failed to exercise due caution in maintenance of accounts and taking supervisory control over the subordinates who had indulged in misappropriation of accounts and commodities. It is well settled that mere negligence or lack of supervisory control on the part of the employee is not enough to initiate surcharge proceedings.

7. It would be apt to refer here that in a similar situation in **A.Janakiraman and another v. Deputy Registrar of Cooperative Societies and another ((2009) 6 MLJ 1051)**, a learned Single Judge of this court, had referred to various earlier decisions on the point and held as under:-

" In surcharge proceedings, the first respondent is duty bound to prove that there was willful dereliction of duty like criminal case. The criminal Court having found that the petitioners are not guilty, the said findings are definitely in favour of the petitioners. The words used under Section 87 (1) are "willful negligence".

The said issue was considered in series of decisions of this Court.

(a) In **Sathyamangalam Co-Operative Urban Bank Limited v. Deputy Registrar of Co-operative Society and Another (1980) 2 MLJ 17**, this Court considered the scope of earlier Section viz., Section 71 of the Tamil Nadu Co-operative Societies Act, 1961, which is analogous to Section 87 of the Act, 1983 and held that **mere negligence is not sufficient to intimate surcharge proceedings.** (emphasis supplied)"

8. Further, recently, a Division Bench of this court in **K.Ajay Kumar Gosh v. Tribunal for Cooperative Cases, Nagercoil ((2009) 4 MLJ 992)**, it has been held thus:

" ... to pass surcharge order under Section 87 of the Act, appellants should have done an actionable wrong either by commission or omission in a deliberate and reprehensible manner with reckless callousness and with a supine indifference, without taking due care and caution ordinarily expected from a reasonable and prudent man under those existing circumstances. In the absence of such categorical finding by the respondents, it is not possible to mulct the appellants with the loss caused to the society."



9. In the case on hand no such deliberate intention or recklessness on the part of the respondents herein is proved to initiate surcharge proceedings against them and thereby the Enquiry Officer had not rendered a finding on that aspect.

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10. In the light of the above decisions and a catena of decision on the issue, this court has no hesitation in holding that the order passed by the Appellate Court holds good and accordingly, it is confirmed.

11. In the result, the civil revision petition stands dismissed. No costs. The connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CRL)

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/ /2021

Sub Assistant Registrar(CS)

aav/ssk

Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

Principal District Judge, Thanjavur

Copy to:

The Section Officer, V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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MGJ(22.10.2021) 4P 4C