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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 14.07.2021

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P.(NPD)(MD)No.1098 of 2013

and

M.P.(MD)No.1 of 2013

V.Pandiyan : Petitioner/Appellant

. Vs .

1.The Deputy Registrar of Co-operative Societies,
Lalgudi,
Trichy District.

2.Deputy Registrar of Co-operative Societies,
Musiri Taluk,
Trichy District.

3.The Special Officer,
Kattur Primary Agricultural Co-operative Bank,
Kattur,
Lalgudi Taluk,
Trichy District. : Respondents/Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to allow this Civil Revision Petition by setting aside the order passed by the learned Principal District Judge, Tiruchirappalli in C.M.A.(CS) No.16 of 2009, dated 21.07.2012.

For Petitioner : Mr.K.Gurunathan
For Respondents : Mr.D.Muruganandam
Additional Government Pleader

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ORDER

This Civil Revision Petition is directed against the order of learned Principal District Judge, Tiruchirappalli, in C.M.A.(CS) No.16 of 2009, dated 21.07.2012.

2.Heard the learned Counsel appearing for the petitioner and Mr.D.Muruganandam, learned Additional Government Pleader appearing for the respondents.

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

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3.1.The revision petitioner is the former Secretary of Kattur Primary Agricultural Co-operative Bank. During audit inspection, it was found that there were some financial irregularities in the bank and surcharge order dated 31.01.2000 was passed by the Deputy Registrar of Cooperative Societies holding that the revision petitioner and the Cashier of the bank are responsible for the amount jointly and severely. At the instance of the Cashier of the bank, the surcharge order dated 31.01.2000 was set aside for violation of principles of natural justice and the matter was remitted to the Surcharge Officer to proceed afresh after furnishing the copies of the documents and statements of witnesses to the Cashier.

3.2.After remand, the Deputy Registrar of Co-operative Societies, Musiri, was appointed as fresh Enquiry Officer and fresh notice was sent to the revision petitioner and the Cashier by name T.Govindaraj. When fresh notice was issued to the revision petitioner and the Cashier of the bank, the revision petitioner submitted his objection by stating that no surcharge proceedings can be initiated after seven years. It is pertinent to mention that the revision petitioner has not raised any specific objection disputing the allegations and charges against the revision petitioner. The objection of the revision petitioner appears to be on the basis that the order of remand was at the instance of the Cashier of the bank by name T.Govindaraj and that therefore, the order of remand cannot be taken to extend the period of limitation to complete the proceedings.

3.3.After giving sufficient opportunity to the revision petitioner, the surcharge order was passed by the Deputy Registrar on 02.01.2009. The charges against the petitioner are specific. The Deputy Registrar after holding enquiry and considering the records found that the revision petitioner and the Cashier of the bank had caused loss to the society to the tune of Rs.3,20,345/- by misappropriating the said amount. The finding is to the effect that both of them have colluded together and that therefore, they are jointly and severely liable for the loss caused to the society to the tune of Rs.3,20,345/-. The learned Principal District Judge, Tiruchirappalli, confirmed the order of the Deputy Registrar of Cooperative Societies after considering the entire records and the statement of revision petitioner and the Cashier during surcharge proceedings.

4.The learned Counsel appearing for the revision petitioner submitted that the subsequent surcharge notice dated 23.01.2008 after a gap of four years vitiate the whole proceedings and that therefore, the order of appellate authority is liable to be set aside. The learned Counsel appearing for the petitioner then submitted that the petitioner had been included unnecessarily based on the statement of the Cashier and that there is no

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evidence against the petitioner involving him in the financial irregularity. The learned Counsel then submitted that the criminal case initiated against the petitioner was ended in acquittal and that the Cashier was also convicted by the trial Court and acquitted by the High Court and that therefore, there is no piece of evidence against the petitioner to make him liable for the charges. The learned Counsel also relied upon few judgments and submitted that there is no findings against the petitioner that he was willfully negligent so as to initiate surcharge proceedings against the petitioner.

5.The petitioner is the former Secretary of the cooperative bank. The charges against the Cashier and the petitioner are specific that the Secretary and Cashier have failed to make entries in relevant registers in respect of the savings bank account and fixed deposit account and misappropriated a fairly larger sum. Though the petitioner put a blame on the Cashier, the revision petitioner has not even disputed the specific allegation made against him in response to the second show-cause notice pursuant to the order of remand.

6.The petitioner has not produced before this Court the objections which the petitioner had raised in response to the surcharge notice issued earlier. From the records, it is seen that the petitioner has no valid defence to escape from the charges. The duties and responsibilities of the Secretary were established in the proceedings.

7.The contention of the learned Counsel appearing for the petitioner that the whole proceedings is vitiated on account of the delay in completion of proceedings cannot be accepted. It is admitted that the enquiry was completed and the surcharge order was originally passed without giving room for any unnecessary delay. No prejudice is specifically pleaded on account of delay. The surcharge order originally passed was not even challenged by the revision petitioner. The earlier order was passed on 31.01.2000 which was well within the period of limitation. Since the surcharge order was set aside and the matter was remanded once again to the Surcharge Officer, the proceedings after remand should be treated as proceedings in continuation of the earlier order and that there is no scope for raising a defence that the subsequent order passed by the Surcharge Officer is liable to be set aside on the ground of limitation. Merely because the petitioner was acquitted in the criminal case, it cannot be said that the surcharge order is liable to be set aside as a consequence. Before the Criminal court, the charges have to be proved beyond reasonable doubt. When surcharge order is passed and liability is fixed for dereliction of duty or willful negligence for the loss caused to the society, the issue has to be considered so as to fix the responsibility and make good the loss

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to the society. The revision petitioner did not participate in the fresh enquiry after receiving notice. He has no explanation to offer even though charges against the petitioner are specific. From the surcharge order, it can be seen that the amount has been misappropriated by the Secretary along with the Cashier. The Secretary, who has to oversee, has signed the accounts. The process by which amount has been swindled from the society is evident from the records considered by the Surcharge Officer. In the names of several individuals, amounts have been withdrawn without corresponding entries in their savings accounts. This cannot be done by the Cashier alone without the cooperation of the Secretary of the society. In a connected proceedings, this Court had occasion to notice that the same petitioner has withdrawn amounts by issuing self-cheques from the savings bank accounts of the bank. Therefore, the surcharge proceedings against the Secretary is not the first one. Having regard to the nature of irregularity, this Court is also convinced that the surcharge order as against the petitioner cannot be interfered with.

8.The learned Counsel appearing for the revision petitioner by relying upon a judgment of this Court in ***A.Janakiraman vs. Deputy Registrar of Co-operative Society*** reported in ***2009 (6) MLJ 1051*** submitted that the report under Section 81 of the Cooperative Societies Act was not at all furnished to the petitioner and that therefore, the surcharge proceedings initiated against the petitioner is violative of principles of natural justice. This Court has already found that the petitioner was given sufficient opportunity at every stage. As a matter of fact, in response to the surcharge notice after the order of remand, the revision petitioner has not given any explanation or objection to the charges except pointing out the delay in completing the enquiry. No prejudice is caused to the petitioner even if it is proved that the report under Section 81 of the Act was not furnished to the petitioner. The charges are specific against the petitioner. When no attempt was made by the petitioner to get the report at the relevant point of time or allege prejudice that has been caused to the petitioner on account of failing to furnish the report under Section 81 of the Act, this Court is unable to appreciate the contention of the learned Counsel appearing for the petitioner. The petitioner is the Secretary of the Society. He has signed the accounts. He is supposed to verify the vouchers, day books and ledgers. Hence, the contention of the learned Counsel appearing for the petitioner that he is not responsible for the misappropriation to the tune of several lakhs has no legal basis. The learned Counsel relied upon several judgments and submitted that there is no specific finding against the petitioner to establish willful negligence and that therefore, the surcharge order cannot be sustained against the petitioner.

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1. ***S.Ramadevi vs. Special Officer*** reported in ***2016 (6) MLJ 485 (relevant paras 25 & 26)***
2. **Kothur Primary Agricultural Cooperative Bank Ltd., vs. Sriramulu and others** reported in **AIR 2005 Mad 85 (Relevant paras 7 & 8)**
3. **S.Subramanian vs. Deputy Registrar** reported in **2002 (3) LW 185 (relevant para 12)**

9.The petitioner is the Secretary of the society and his duties and responsibilities are specified. The charge against the petitioner are specific. There is a clear finding by the Surcharge Officer that the petitioner is directly responsible for the misappropriation. When it is a case of misappropriation and it is found that the Secretary of the society has fraudulently misappropriated a huge sum with the connivance of the Cashier, the judgments relied upon by the learned Counsel appearing for the revision petitioner are not helpful to the petitioner. When the petitioner has not given any specific explanation to the surcharge notice and no solid ground is raised in the revision petition to vitiate the surcharge proceedings, this Court is unable to agree with the submission of the learned Counsel appearing for the revision petitioner. It is to be seen that the duties and responsibilities of the revision petitioner has been fixed and that the petitioner who has signed the account approving the entries cannot wriggle out of his responsibilities. In this case, the deficiency caused to the socoeity is not disputed. Hence, the petitioner without any acceptable explanation making the Cashier solely responsible for the loss cannot succeed by pleading ignorance.

10.As a result, this Court finds no legal infirmity or irregularity in the order of the learned Principal District Judge, Tiruchirappalli, confirming the surcharge order passed by the Deputy Registrar of Cooperative Societies dated 02.01.2009. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected M.P is closed.

Sd/-

Assistant Registrar (w)

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Sub Assistant Registrar(CS)

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To

1.The Principal District Judge,
  Tiruchirappalli.

+1 CC to M/s.G.THALAIMUTHARASU, Advocate (SR-22615[F] dated 15/07/2021)

Order made in
C.R.P(NPD)(MD)No.1098 of 2013

14.07.2021

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