



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE:08.10.2021.

CORAM

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

C.R.P. (PD) (MD) No.841 of 2012

and

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

WEB COPY

V.Veeramani

... Petitioner

vs.

The Deputy Registrar,
Co-operative Society (Housing Board),
Tirunelveli-2.

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 20.8.2004 passed in C.M.A.(CS) No.3 of 2004 on the file of the Principal District Judge, Tirunelveli.

For Petitioner : Mr.H.Arumugam
For Respondent : Mr.A.Baskaran, Govt. Advocate

ORDER

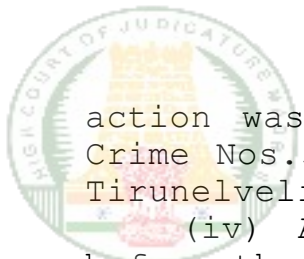
The civil revision petition has been filed by the 10th respondent in the Surcharge Proceedings against the order passed by the Principal District Judge, Tirunelveli confirming the surcharge order passed by the respondent.

2. Brief facts of the case is as under:-

(i) The petitioner is a retired Sub Registrar of T.N.V.H.S.G.25 Palaymkottai Co-operative Housing Society and during his tenure, certain loans were disbursed to its Members and an enquiry was instituted under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 by proceedings dated 16.5.2000 to find out the financial irregularities in lending loan to its members under Scheme Nos.14, 15 & 16 during the year 1996 to 1997.

(ii) The Enquiry Officer submitted his Report recommending to recover a sum of Rs.33,05,643/- towards loss to the Society from the Board of Society and Special Officers and Co-operative Sub Registrar. Based on that Report, a show cause notice was issued to the petitioner on 4.4.2002 under Section 87 of the Act and surcharge order was passed on 3.4.2003 against the petitioner and 11 others. Two of them were exonerated by holding that the loan amount advanced by them to the members during their period can be recovered.

(iii) The revision petitioner was held liable jointly and severally alongwith other office bearers and his share towards the loss ordered to be recovered was Rs.30,674/-. Further, departmental



action was initiated and a criminal case was also registered in Crime Nos.31 to 33 of 2007 on the file of Judicial Magistrate II, Tirunelveli.

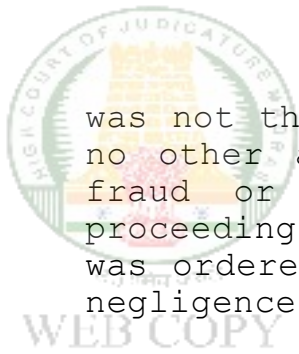
(iv) As against the award, the petitioner preferred appeal before the Principal District Court, Tirunelveli in C.M.A.(CS) No.3 of 2004 which came to be dismissed on 20.8.2004 and challenging the same, the present civil revision petition has been filed.

3. Learned counsel appearing for the petitioner would submit that the parallel proceedings viz., the criminal case registered on the same allegation, the petitioner had been discharged by an order dated 26.7.2011 in CrI.R.C.Nos.678 to 680 of 2008 and thereby the surcharge order against the petitioner is liable to be set aside. He would also submit that the departmental proceedings initiated against the petitioner also ended in "censure" insofar as the petitioner as the negligence is not wilful and on this ground also, he is entitled to discharge from the surcharge proceedings. He would further submit that two of the officers in the same cadre had been exonerated on the ground that the amount can be recovered and there is no loss to the Society and thereby on the principle of indiscrimination also, the petitioner is entitled to discharge. He would further submit that the petitioner does not come under the purview of "Officer" enumerated under Section 2(19) of the Act and the petitioner cannot be initiated with surcharge proceedings as he was not entrusted with the organisation or management of the Society. He would also submit that the petitioner could not decide the genuineness or validity of the revenue records issued by the Village Administrative Officer in respect of the loan transactions and thereby the petitioner could not be proceeded on the ground that he had not verified the title of the property as it is the duty of the petitioner to only verify as to whether the loan application contains relevant papers and recommend for sanction of loan on the basis of the documents forwarded by the office bearers of the Society and the petitioner is not the loan sanctioning authority and thereby, he could not be found fault with.

4. Mr.Baskaran, learned Government Advocate appearing for the respondent would submit that the petitioner being Sub Registrar of the Society during the relevant point of time shall have supervisory control over the affairs of the Society and therefore, he was responsible for having granted housing loans to the members without properly verifying the documents and thereby he is also responsible for the loss caused to the Society.

5. Heard the learned counsel for the parties and perused the materials available on record.

6. On going through the facts aspects projected by the learned counsel for the parties, this court finds that the petitioner was holding a power to verify the loan applications as to whether they contain relevant papers and recommend for the loans and he



was not the loan sanctioning authority. Apart from that, there is no other attribution to the petitioner for having committed any fraud or mischief. Further, it is seen that the criminal proceedings also ended in favour of the petitioner and only censure was ordered in the departmental proceedings. Therefore, no wilful negligence is attributed to the petitioner.

7. It is relevant to note that to initiate surcharge proceedings against an employee of the Society, it is relevant to note that he should have indulged in any actionable wrong either by commission or omission in 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.

8. 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)"

9. Further, 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."

10. In **D.Ganesan vs. The Commissioner of Sugar, Chennai & others** (CDJ 2019 MHC 4275), this court, in similar circumstances, has held as under:-

"No doubt, the petitioners have acted without care and performed their duties in a casual and negligent manner. However, such negligence alone is not sufficient to hold them liable under Section 87 of the said Act, unless the same is coupled with wilful or deliberate intention to commit such negligence. As there is no finding given by the authorities below to that effect, then the principle that has been laid in the series of decisions, referred to supra, of this Hon'ble Court has to be applied to this case to hold that the proceedings under Section 87 of the said Act cannot be initiated against the petitioners in the absence of any wilful negligence on their part.

.....

When the staffs were given special assignment to do certain acts, the higher officials have to verify the work done by the staffs. However, when the subordinates prepared a note or prepared a bill and submitted before the higher officers, except to put initial, under the impression that the bills are genuine, the higher officer has no other role. Merely because the revision petitioner was the employer of the institute, he cannot fastened with liability."

11. In view of the above discussion and the ratio laid down in the above decisions, this court has no hesitation in holding that the order passed by the Appellate Court and the Surcharge Proceedings initiated against the petitioner herein also have to be set aside. Accordingly, the civil revision petition is allowed. The order passed by the Principal District Judge, Tirunelveli dated 20.8.2004 in C.M.A.(CS) No.3 of 2004 and the order passed by the the respondent dated 3.4.2003 insofar as the present revision petitioner is concerned, are set aside. No costs. The connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

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Sub Assistant Registrar(CS)



ssk.

Note: In view of the present lock down owing to COVID 19 pandemic, a web copy of the order may be utilised 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

- 1.The Principal District Judge,
Tirunelveli.
- 2.The Deputy Registrar,
Co-operative Society (Housing Board),
Tirunelveli-2.

C.R.P. (PD) (MD) No.841 of 2012

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