



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.02.2021

DELIVERED ON: 16.06.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (PD) (MD)No.622 of 2020

and

CMP (MD)No.4015 of 2020

B.Kumar : Petitioner/Appellant

vs.

1.R.619, Tiruchirappalli Consumers
Cooperative Wholesale Stores Ltd,
(Chinthamani),
Rep. by its Deputy Registrar,
Managing Director,
E.V.R.Road, Puthur,
Trichy - 625 017.

2.The Deputy Registrar of Co-operative Societies,
Trichy Circle,
rep. by its Deputy Registrar,
Mannarpuram,
Trichy - 620 020.

: Respondents/Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 12.12.2019 passed in CMA(CS)No.196 of 2016 on the file of the Principal District Judge, Tiruchirappalli.

For Petitioner : Mr.R.Subramanian

For Respondent : Mr.J.Gunaseelan Muthiah

ORDER

This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 12.12.2019 passed in CMA(CS)No.19 of 2016 on the file of the Principal District Judge, Tiruchirappalli.



2. The petitioner would aver among other things that the petitioner joined the service of the first respondent as Salesman on 10.05.1978 and retired on 30.04.2015, on attaining superannuation. During the services of the petitioner, the petitioner was given an additional duty to write cheques, as and when directed by the first respondent. While so, after his retirement, the second respondent initiated a proceedings under Section 81 of Tamil Nadu Cooperative Societies Act as one Ponmudi, the erstwhile Special Officer/Deputy Registrar had paid a sum of Rs.11,80,000/- to one Sri Enterprises for purchasing generator with automatic transfer switch without obtaining permission from the Central Cooperative Bank. Subsequently, by an order dated 19.10.2015, the second respondent has directed to initiate surcharge proceedings for recovery for a sum of Rs.9,80,000/-. In that proceedings, the second respondent has also issued direction to initiate recovery proceedings against the petitioner along with the said Ponmudi, as the petitioner wrote the cheques for making the above payments. Further, the second respondent has conducted the proceedings under Section 87 of the Act and passed an order dated 20.07.2016 holding that the petitioner was jointly liable to pay the amount. Challenging the order, the petitioner filed Civil Miscellaneous Appeal(CS) No.19 of 2016 on the file of the Principal District Judge, Tiruchirappalli and the same was dismissed vide order dated 12.02.2019. Aggrieved over the same, the petitioner is before this Court for the relief stated earlier.

3. The learned counsel for the petitioner contends that the proceedings of the second respondent is ex-facie, erroneous and unsustainable in the eye of law. The second respondent failed to note that one Arjunan, who is the General Manager(in-charge) has created a file for making the above purchase and wrote the proposal for the same and the Special Officer/Deputy Registrar has issued orders by making an endorsement and on the basis of the same, the petitioner wrote the cheques as and when instructed by the Managing Director or Special Officer of the first respondent to which the petitioner cannot be held responsible for the violations committed by the Special Officer in making payments. The petitioner was only entrusted the work of writing cheque and he only filled up the cheque as directed by Special Officer. Even the Special Officer, namely, the said Ponmudi has admitted the issuance of cheque and subsequently Sri Sai Enterprises has repaid a portion of the amount admitting their liability. Hence, he prays for allowing this Civil Revision Petition.

4. *Per Contra*, the learned counsel for the respondent contends that the petitioner along with two others have colluded with the private firm for purchasing Generator with automatic transfer switch without obtaining permission from the Central Cooperative Bank. The petitioner should have been more cautious at

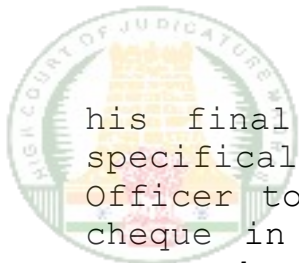


the time of writing cheque to the private firm. Therefore, the Court below after carefully considering the points as well as materials available before it, came to the conclusion that the role of the petitioner also in swindling the society amount cannot be ruled out and accordingly, fixed the liability on the petitioner, which cannot be found fault with. He further contends that though the payment was made, the said generator was not delivered there and therefore, surcharge proceedings were initiated against the petitioner. It is the specific contention of the learned additional government pleader that wantonly and wilfully the petitioner and others colluded together to purchase the above generator with the intention of misappropriating the amount. To sum up, he prays for dismissal of the Civil Revision Petition.

5. This matter was admitted on 27.08.2020. No counter has been filed so far.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

7. It is seen from the records available before this Court that the petitioner is not an authorised officer to issue cheque and at the maximum, he holds the rank of clerk/salesman and the alleged cheque has been written on the specific instruction of his higher officials, which is evident from the record. The petitioner was only a salesman, which is a low level post in the first respondent society and he only wrote the cheques as directed by the Special Officer/Deputy Registrar of the first respondent. It is also seen from the records that the petitioner has written the cheques based on the order passed by the Special Officer which is not disputed by the respondents. The purchase of generator has been taken at the higher level and the petitioner was entrusted the work of writing cheque only and not more than that. Just because he had written the cheque, the respondents cannot fix the entire liability on this petitioner and he did only a clerical work as done in the government offices. If the action of the petitioner is not as per law, nothing prevented the respondents from stopping the respondents to issue the cheque. In the case on hand, it is crystal clear that the payment has been made to Sri Sai Enterprises, who after admitting his liability, had repaid a portion of the amount. Therefore, there is no doubt that the private firm has swindled the money. Further, one Ponmudi, the then Deputy Registrar, has deposed that due to administrative pressure he signed the alleged cheque. This Court is at a loss to understand that once the criminal liability is very much known, on the face of the record, why the respondents are not taking effective steps against Sri Sai Enterprises for recovering the amount from the said firm. Further, the second respondent in



his final order dated 20.07.2016 issued under Section 87 has specifically recorded the findings to the effect that the Special Officer took a decision to purchase the generator and issued the cheque in favour of the private firm, to which, the petitioner cannot be made as a scapegoat for the outcome of the managerial decision taken by the Special Officer. For all the foregoing reasons, the respondents herein are directed to take effective steps to take action against the said private firm against the criminal complaint lodged by them and see that the amount is recovered along with interest from the said private firm, to the society, without further loss of time.

8. In the light of the above, this Civil Revision Petition stands allowed and the order of the Court below stands set aside. Consequently, the connected miscellaneous petition is closed. No Costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

bala

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

The Principal District Judge,
Tiruchirappalli.

+1 CC to SPL GP (SR-19428[F] dated 16/06/2021)

+1 CC to MR.R.SUBRAMANIAN, Advocate (SR-19447[F] dated 17/06/2021)

order made in
C.R.P. (PD) (MD) No.622 of 2020
16.06.2021

KM(29.06.2021) 4P 4C