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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	05.04.2022
DELIVERED ON	22.04.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

CR.P.(MD)No.34 of 2022
and
C.M.P.(MD)No.184 of 2022

K.Ponraman

...Petitioner/Appellant

Vs.

1.The Deputy Registrar of Cooperative Societies,
Tiruchirappalli Circle,
Tiruchirappalli - 620 020.

2.R 1262 Asoor Primary Agricultural,
Cooperative Credit Society Ltd.,
Represented by its Administrator.

...Respondents/Respondents

PRAYER: Civil Revision Petition under Article 227 of Constitution of India, to set aside the Judgment and decree passed in C.M.A(CS)No.1 of 2018 dated 24.04.2019 by the learned Principal District Judge, Tiruchirappalli.

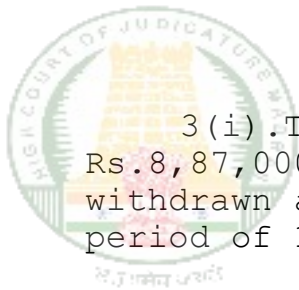
For Petitioner :Mr.D.Shanmuga Raja Sethupathi
For R-1 :Mr.M.Senthil Ayyanar,
Government Advocate
For R-2 :Mr.P.R.Prithivi raj, Advocate

ORDER

This Civil Revision Petition has been filed by the revision petitioner to set aside the Judgment and decree, dated 24.04.2019 in C.M.A(CS)No.1 of 2018 passed by the learned Principal District Judge, Tiruchirappalli.

2.The parties are referred to as per the rank mentioned before the Court below.

3.The revision petitioner was President of the 2nd respondent's society and five charges were framed against him. After enquiry under Section 87(1)(g) of Tamil Nadu Co-operative Societies Act, orders also passed against him for 2, 3 & 5 charges on 10.11.2016.



3(i).The second charge is that on 21.06.2016, an amount of Rs.8,87,000/-(Rupees Eight Lakhs Eighty Seven Thousand Only) was withdrawn and remitted back on 02.07.2016. So, the interest for the period of 11-days.

3(ii).The third charge is that the Members of the Society have paid loan amount to the society. But the delinquents have not credited the amount to the society. So, they have misappropriated a sum of Rs.26,12,334/-[Twenty Six Lakhs Twelve Thousand Three Hundred and Thirty Four Only].

3(iii).The fifth charge is that they have forged the signature of the members and withdrawn a sum of Rs.2,45,900/-[Rupees Two Lakhs Forty Five Thousand and Nine Hundred Only].

4.After enquiry, all the three charges were proved against the revision petitioner and order was also passed. Aggrieved by the said order, this revision petitioner has preferred C.M.A.No.1 of 2018 which was also dismissed and confirmed the order in surcharge proceedings. Against the same, the revision petitioner is before this Court.

5.Heard on either side. Perused the material documents available on record.

6.This Civil Revision Petition is filed on the ground that the Court below ought to have considered that the Jewel Appraiser had remitted the entire misappropriated amount of Rs.8,87,000/-relating to the irregularities stated as item No.2 and therefore, the petitioner cannot be liable for the interest of Rs.3,208/-towards the temporary period of misappropriation. The 1st respondent has not furnished the relevant records including the enquiry report under Section 81 of the Tamil Nadu Cooperative Societies Act, during the surcharge proceedings. The surcharge proceeding was conducted without even following the principles of natural justice and without giving opportunity to put forth the defence. The 1st respondent has not given any reason or finding in respect of the liability of the petitioner.

7.The learned counsel appearing for the revision petitioner contended that he is only a President. His power is supervision only. Mere failure in supervision cannot be held as wilful negligent. The Board only liable for the imperfect supervision. The President is not responsible for the misappropriation as stated in the charges framed against him.

8.The ingredients of **Section 84 of the Tamil Nadu Co-operative Societies Act**, is extracted hereunder:

"84.Maintenance of accounts and books

by registered society:

The chief executive that is, the principal paid officer of every registered society by



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whatsoever designation he is called, or the president of that society, if there is no such chief executive in that society, shall be bound to keep and maintain such accounts and books relating to that society in such manner as may be prescribed. He shall be responsible for the correct and up to date maintenance of such accounts and books and for producing them when called for in connection with audit under section 80 or inquiry under section 81 or inspection or investigation under section 82 or Inspection of books under section 83".

From the above, only the chief executive or the President of the Societies is responsible for maintaining accounts.

9.The ingredients of **Section 87(1) of the Tamil Nadu Co-operative Societies Act**, is extracted hereunder:

"87. Surcharge.- (1) *Where in the course of an audit under section 80 or an inquiry under section 81 or an inspection or investigation under section 82 or inspection of books under section 83 or the winding-up of a society, it appears that any person who is or was entrusted with the organisation or management of the society or any past or present officer or servant of the society has misappropriated fraudulently retained any money or other property or been guilty of breach of trust in relation to the society or has used any deficiency in the assets of the society by breach of trust or wilful negligence or has made any payment which is not in accordance with this Act, the rules or the by-laws the Registrar himself or any person specially authorised by him in this behalf, of his own motion or on the application of the board, Liquidator or any creditor or contributory may frame charges against such person or officer or servant and after giving a reasonable opportunity to the person concerned.*"

10.So, the President who is entrusted with maintenance of accounts is responsible for the misappropriation. Without the knowledge of the President no one can withdraw the amount. The revision petitioner/President has admitted that he and the Secretary of Society alone can sign the cheques. So, the President has to verify what are amounts withdrawn and for what purposes.

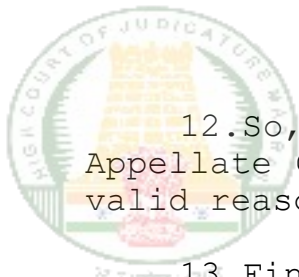
11.The Board cannot be held liable for the work entrusted to
<https://hdservices.eports.gov.in/hdservices> On perusal of the case records the learned Principal District Judge, Tiruchirappalli has clearly discussed in the order passed in C.M.A(CS)No.1 of 2018 is as follows:



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17. Further on perusal of the case records, it found that one of the delinquent namely Ranichandra was appointed as jewel appraiser in the society. The appellant without having any power, has appointed the said Ranichandra as Clerk-cum-appraiser. Even the appellant having knowledge that the said Ranichandra and another delinquent Karuppaiah have misappropriated the amount of the depositors and the same was brought to the knowledge of the appellant by other staff, the appellant has tried to solve the problem without go to the knowledge of the higher officials. This court opinion is that even after having knowledge, the appellant has not come forward to prevent the illegal act of the paid servants of the society is one of the ground of willful negligence.

18. The 1st respondent, on perusal of the evidence given by the depositors found that the appellant and two other delinquents committed irregularities in the S.B. Accounts of the members of the society and committed misappropriation in the pledge loan remitted by the members and withdrawing the amounts from the SB account of the members without their knowledge and thus came to the conclusion that misappropriation of huge amount has been done and thus they have committed loss to the funds of the society. The appellant being the President of the society having the responsibility of supervising the activities of the staff of the society has committed the irregularity. The society has been created with an avowed object to help the financially downtrodden people and large extent of public money was misappropriated by the persons who are holding the key posts in the society. There is misappropriation of public money and the appellant has caused loss to society by willful negligence and actionable wrong committed in violation of the Act and the By-laws of the society. The appellant as the President of the society is also jointly responsible for the misappropriation committed in the society. Therefore, the appellant is also liable to pay the surcharge amount along with the then Secretary and Appraiser of the society. This Court finds that the impugned order passed by the respondent is sustainable. The appeal is dismissed".



12. So, the President cannot escape from the liability. The Appellate Court has rightly dismissed the C.M.A. This Court has no valid reason to interfere with the order passed by the Court below .

13. Finally, this Civil Revision Petition is dismissed by confirming the order, dated 24.04.2019 in C.M.A(CS)No.1 of 2018 passed by the learned Principal District Judge, Tiruchirappalli. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

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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

1 The Principal District Court,
Tiruchirappalli.

2 The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.P.R. PRITHIVIRAJ, Advocate (SR-20409[F] dated 22/04/2022)

+1 CC to M/s.SPL.GP. (SR-20723[F] dated 22/04/2022)

+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-20762[F] dated 25/04/2022)

Order made in
C.R.P. (MD) No. 34 of 2022
22.04.2022

SS/11.05.2022 : 5P/7C