



CRP(PD)(MD)No.1529 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 02.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.1529 of 2022

and

CMP(MD)No.6542 of 2022

R.Murugesan

... Petitioner

versus

1. The Deputy Registrar of
Co-operative Societies,
JJ Nagar, Vaigai Dam Road,
Periyakulam, Theni District.

2. V.Janaki

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed in CMA (CS) No.6 of 2019, dated 10.09.2020 by the Principal District Court cum Co-operative Tribunal, Theni, under Section 152 of the Tamilnadu Co-operative Societies Act, dismissing the appeal and confirming the order of the 1st respondent/1st respondent passed in the Surcharge proceeding in Arbitrator passed in S.C.No.1/2017-2018, (Na.Ka.273/2017/Sa.Pa) dated 06.04.2018 that



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directed the revision petitioner and the 2nd respondent to pay Rs.10,25,070/- along with 18% interest till the date of payment.

For Petitioner : Mr.T.Ravichandran
For R1 : Mr.M.Senthil Ayyanar,
Government Advocate

ORDER

This Civil Revision Petition is filed against the order dated 10.09.2020, passed in CMA (CS) No.6 of 2019, by the Principal District Court cum Co-operative Tribunal, Theni.

2. The petitioner herein is working as a Secretary in MD Spl. 79, Rengasamuthiram Primary Agricultural Co-operative Society. The second respondent is working as a Cashier in the said Society. While so, an enquiry was conducted under Section 81 of the Tamil Nadu Co-operative Societies Act (hereinafter referred to as “the Act”) and based on the enquiry report dated 24.07.2017, a show cause notice dated 10.10.2017 was issued under Section 87 of the Act by framing the



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following charges:

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- (i) misappropriation of cash to the tune of Rs.5,98,170/-;
- (ii) misappropriation of cash in savings accounts to the tune of Rs.1,69,600/-;
- (iii) misappropriation of loan due amount, given by the members, to the tune of Rs.2,15,300/-;
- (iv) misappropriation of amount from the credit loan of Central Cooperative Bank to the tune of Rs.42,000/- by creating false entry in the ledger.

The petitioner gave his explanation denying all the charges stating that he is not responsible for the same and the second respondent alone is responsible for the same. However, the first respondent/the Deputy Registrar of Co-operative Societies, by his order dated 06.04.2018, held that the petitioner and the 2nd respondent are jointly and severally liable for loss caused to the Society and directed them to pay a sum of Rs.10,25,070/- along with 18% interest. Aggrieved over the same, the petitioner has also filed an appeal before



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the Principal District Court cum Co-operative Tribunal, Theni, which was taken on file as C.M.A.(CS) No.6 of 2019. However, the learned Principal District Judge, Theni, by order dated 10.09.2020, dismissed the appeal, confirming the order passed by the first respondent and directed the petitioner and the second respondent to pay the amount of Rs.10,25,070/- along with 18% interest. Challenging the same, the present Civil Revision Petition has been filed.

3. The learned counsel appearing for the petitioner submits that as per the resolution of the Society, the second respondent alone is responsible for cash balance, savings account, loan remittance, etc. As the charges mentioned in the show cause notice fall under the duties and responsibility of the second respondent, the petitioner is not responsible for the alleged misappropriation of funds and the second respondent alone is responsible for the same.

4. The learned counsel appearing for the petitioner further



submits that it is the duty of the petitioner to look into all affairs of the Society. However, during that period, since the petitioner was entrusted with the construction work by the Registrar, vide Circular in Na.Ka.No.25658/2011, dated 20.09.2011 and the Joint Registry, vide Order in Na.Ka.No.812409 Tho Va, dated 29.11.2011, the second respondent was entrusted with entire transaction works. Therefore, the second respondent alone is responsible for the misappropriation of funds and the petitioner cannot be held liable for the same.

5. The learned counsel for the petitioner further submits that during the enquiry held under Section 87 of the Act, the petitioner appeared in person and submitted his explanation denying all the charges that the second respondent alone is fully responsible for the misappropriation of funds. However, the first respondent/the Deputy Registrar of Co-operative Societies, without considering the explanation given by the petitioner, has mechanically passed the order dated 06.04.2018, holding that the petitioner and the second respondent



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are jointly and severally held responsible for the loss caused to the Society and directed to pay a sum of Rs.10,25,070/-, along with interest at the rate of 18% p.a. The learned counsel further submits that though the petitioner filed the appeal in C.M.A.(CS) No.6 of 2019 before the Principal District Court cum Co-operative Tribunal, Theni, on the ground that he was not given sufficient opportunity of hearing and principles of natural justice was not followed during the enquiry. However, the learned District Judge, Theni, without applying his mind, simply confirmed the order of the first respondent and directed to pay the amount of Rs.10,25,070/- with interest at the rate of 18% p.a.

6. The learned counsel for the petitioner further submits that the surcharge action under Section 87 of the Act will be attracted only against a person, who was entrusted with the organisation or management of the society, has misappropriated, fraudulently retained any money or committed breach of trust or caused deficiency by breach of trust or willful negligence. In this case, there is no allegation of



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willful negligence. Therefore, the allegations levelled against the petitioner are liable to be set aside.

7. This Court considered the submissions made by the learned counsel for the petitioner and also perused the materials placed on record.

8. The main contention of the petitioner is that he is not responsible for the misappropriation which had taken place in the Society. The responsibilities are fixed only on the Cashier, who is the second respondent herein and not on the petitioner. It is the further contention of the petitioner is that he was also entrusted with the construction work by Registrar from 29.11.2011 and he was fully engaged in that work and therefore, the second respondent was fully responsible as per the duties and responsibilities fixed on her and all the entries were written by the second respondent in the Registers and all the charges of loss were committed only by the second respondent.



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9. During the audit for the year 2012-2013, the Department found misappropriation of amount in respect of cash on hand, deposits, loan recovery and credit loan and thereafter, an enquiry was ordered under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983. The Enquiry Officer submitted his report on 24.07.2017 that the appellant and the second respondent, by correcting and altering the registers, have wrongfully gained a sum of Rs.10,25,070/-. The charges levelled against the petitioner and the second respondent are as follows:

(i) they had received the loan amount from the members and issued no due certificates and not made any entries in the Registers and thereby, they swindled a sum of Rs.5,98,170/-;

(ii) by correcting the Savings Deposit Registers, they had taken a sum of Rs.1,69,600/-;

(iii) after collecting the loan amount from the members who availed KCC loan, they had issued no due certificate and did not enter the same in the KCC loan register and also misappropriated a sum of



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Rs.2,15,300/-;

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(iv) they had taken a sum of Rs.20,000/- on 13.12.2012 and Rs.22,000/- on 19.12.2022, but, there was no entry in the credit note and thereby committed misappropriation.

10. The petitioner, who is the Secretary and Chief Executive Officer of the Society, is overall in-charge of the Society. He has to maintain the accounts and is also responsible for the cash credit, jewels and also other valuables. When he is overall in-charge of the Society and he has to look into all affairs of the Society, it is not justifiable that he was entrusted with some construction work and therefore, the entire transaction work was carried out only by the Cashier, who is the second respondent herein.

11. Further, the enquiry proceedings was initiated on 10.10.2017 and enquiry notice was issued to the petitioner on 21.11.2017. For want of his appearance, it was adjourned to 28.11.2017, 13.12.2017,



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18.01.2018 and 06.02.2018. Subsequently, it was posted to 04.04.2018, 06.02.2018. Finally, the enquiry was concluded on 06.04.2018.

Though sufficient opportunity was provided, the petitioner has not insisted for cross examination of any witnesses. Therefore, now, the petitioner cannot take a plea that he was not provided with sufficient opportunity.

12. In view of the above, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

02.09.2022

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Index : Yes / No

Internet: Yes / No.

To

1. The Principal District Court
cum Co-operative Tribunal,
Theni

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