



C.R.P.No.1237 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 22.06.2023

Delivered on 22.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.1237 of 2021
and C.M.P.No.9578 of 2021

S.Sathasivam

...Petitioner/Appellant/Defendant

-Vs-

1.The Deputy Registrar of Co-operative Societies,
Tirukoilur, NGO Nagar,
Tirukoilur.

...1st Respondent/1st Respondent/
Surcharge Officer

2.The Special Officer,
Farmers Service Co-operative Society,
Thirunavalur.

...2nd Respondent/2nd Respondent/
Plaintiff

Prayer:- Petition filed under Article 227 of the Constitution of India, against the order and decree passed in CMA(CS)No.8 of 2012, dated 28.10.2020 on the file of the learned Principal District Judge, Villupuram, confirmed by Na.Ka.No.194 of 2011 Sa.Pa dated 15.06.2012 on the file of the Deputy Registrar of Co-operative Society, Thirunavalur.



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For Petitioner : Mr.C.Prakasam
For R1 : Mr.V.Jeevagiridharan
Additional Government Pleader (CS)
For R2 : Mr.L.P.Shanmugasundaram

ORDER

This Civil Revision Petition is filed by the Appellant in CMA(CS)No.8 of 2012, dated 28.10.2020 before the learned Principal District Judge, Villupuram, who is the Revision Petitioner herein.

2. Brief facts which are relevant to decide this Civil Revision Petition are as follows:-

- a) The Petitioner was serving as Sub Registrar in the Department of Co-operative Societies, Thirunavalur. He was posed as the Special Officer of the Farmers Service Co-operative Society, Thirunavalur, Villupuram District.
- b) As per the proceeding of the 1st Respondent/Deputy Registrar of the Co-operative Society, Tirukoilur, the Petitioner, who was the Sub-Registrar of the Co-operative Society, was posted as Special Officer of the Farmers Service Co-operative Society, Thirunavalur,



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Villurpuram District. He was holding the additional post of Special Officer for two other Co-operative Societies within Villupuram District. Those Co-operative Societies were dealing with the ration shop and rent shop. Therefore, the primary duty of the Petitioner was to supervise the distribution of the central food grains through the ration shop run by the Co-operative Society.

- c) In all, the Petitioner as Special Officer of three Co-operative Societies, had to supervise 88 staffs members of three Co-operative Societies, which was highly difficult and impracticable for an ordinary person. He was overburdened with the ration shops and their working which deals with the common man who receives essential commodities, particularly provisions, from the fair price shop, the ration shop, which is rented by the Co-operative Societies. He had been managing the said role to the best of his ability, as expected from him by his superiors. Also, the proceedings of the 1st Respondent/Deputy Registrar of Co-operative Societies, Tirukoilur, ordering the Petitioner/ Sub Registrar of the Co-operative Societies to act as Special Officer of three Co-operative Societies. One was in the regular job and the other two additional posts had to be obeyed



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by him without any choice. While so, he was supervising the entire Society under his control to the best of his ability, as was expected from him by his superiors. From 31.12.2009, for five months, he was in additional charge of two other Co-operative Societies.

- d) As part of his duty, he had inspected the Farmers Service Co-operative Society, Thirunavalur, Villurpuram District, on 27.04.2010. On the same day, he found misappropriation of the collection of money Rs.1,64,13,709/- by the cashier and clerk of the Farmers Service Co-operative Society, Thirunavalur, Villurpuram District, and he had placed the clerk as well as the cashier immediately under suspension.
- e) As per the Tamil Nadu Co-operative Societies Act, 1983, the Petitioner is the Sub-Registrar of Co-operative Societies, Thirunavalur, also holding the post of Special Officer of the Farmers Service Co-operative Society, Thirunavalur, Villurpuram District.
- f) After suspending the clerk and cashier of the Farmers Service Co-operative Society, Thirunavalur, Villurpuram District, he had to post the other staff who are available within the same Society. Accordingly, he had by his proceedings appointed the staff of the



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Farmers Service Co-operative Society, Thirunavalur, Villurpuram District, Thiru.Murugaiyan, as cashier, Thiru.Sivasubramanian, as clerk, and Thiru.Veerasundaram as salesman. He had taken custody of the key of the Society and handed it over to Thiru.Elumalai, Secretary of the Farmers Service Co-operative Society, Thirunavalur, Villurpuram District.

- g) While so, in the intervening night between 22-23.05.2010 theft of the jewels took place in the Farmers Service Co-operative Society, Thirunavalur, Villurpuram District, whereby 493 bags of jewellery kept in the safe locker of the Farmers Service Co-operative Society, Thirunavalur, Villurpuram District, were taken. The same was reported to the Petitioner by the staff of the Society. The Petitioner immediately directed the Secretary of the Society to lodge a complaint with the Thirunavalur Police. Accordingly, the Secretary of the Society lodged a complaint with the Thirunavalur Police. Out of 493 bags of jewels kept in the staff custody of the locker of the Farmers Service Co-operative Society, Thirunavalur, Villurpuram District, which contained 1780 sovereigns of gold and was found missing.



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- h) The Secretary of the Farmers Service Co-operative Society, Thirunavalur, Villurpuram District, had preferred the complaint before the Thirunavalur Police. Based on which FIR in Crime No.160 of 2010 was registered. Even after the registration of the case, the Thirunavalur Police could not trace out the missing jewels or arrest the culprits involved. Therefore, the case was handed over to the Deputy Superintendent of Police of the Economic Offences Wing, Chennai, by the higher officials of the Police Department.
- i) Even after handing over the investigation to the Deputy Superintendent of Police of the Economic Offences Wing, Chennai, they too could not trace out the missing jewels and address the culprits involved. Therefore, the case was transferred to the CBCID.
- j) After the CBCID took up the investigation, two persons were arrested, and based on their confession, 32 sovereigns of gold jewels missing from the locker of the Farmers Service Co-operative Society, Thirunavalur, Villurpuram District, were recovered. The two persons were arrested, namely, Thiru.Mothibai @ Farooklal and Thiru.Sivakumar. After the arrest and further investigation, the CBCID had found out that it was the work of insiders of the



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Society. Therefore, Thiru.Elumalai, Secretary of the Society, Thiru.Murugayen, cashier of the Society, Thiru.Sivasubramaniam, clerk of the society, and Thiru.Veerasundram, salesman of the Society, were also arrested and charge sheet was laid against them by the CBCID Police. They were also suspended.

- k) Based on the report of the Investigation Officer, the Government had issued G.O(MS)No.590, Home Department, dated 30.08.2013, to recover the value of the missing jewels of 1780 sovereigns of gold valued at Rs.1,64,13,445/-. Meanwhile, the Farmers Service Co-operative Society, Thirunavalur, Villurpuram District, had ordered preliminary inquiry regarding the theft in the Society under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983.
- l) In the inquiry, report was against the Thiru.Elumalai, Secretary of the Society, Thiru.Murugayen, cashier of the Society, Thiru.Sivasubramaniam, clerk of Society, and Thiru.Veerasundaram, salesman of the Society. Based on the inquiry under Section 81(1) of the Tamil Nadu Co-operative Societies Act, 1983, the Deputy Registrar of Co-operative Societies, Tirukoilur, had conducted inquiry under Section 87 of the Tamil Nadu Co-operative Societies



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Act, 1983, regarding surcharge proceedings for causing loss of Rs.1,64,13,445/- as per G.O.Ms.No.590, Home Department, dated 30.08.2013.

- m) The inquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, did not contain any adverse remarks against the Petitioner. The charge sheet laid by the CBCID in Crime No.160 of 2010, was laid against Thiru.Elumalai, Secretary of the Society, Thiru.Sivasubramaniam, clerk of the Society, Thiru.Murugayen, cashier of the Society, and Thiru.Veerasundram, salesman of the Society, along with Mothibai @ Farooklal and Sivakumar.
- n) While so, the surcharge proceeding initiated by the Deputy Registrar of Co-operative Society, Villupuram, was initiated against the Petitioner for causing loss to the tune of Rs.1,64,13,445/- to the Farmers Service Co-operative Society, Thirunavalur, Villurpuram District. The Petitioner filed Appeal as per the Tamil Nadu Co-operative Societies Act, 1983, before the Special Appellate Tribunal under the Tamil Nadu Co-operative Societies Act, 1983, the learned Principal District Judge, Villupuram.



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o) Aggrieved by the same, the Petitioner had filed this Civil Revision Petition under Article 227 of the Constitution of India.

3. Learned Counsel for the Revision Petitioner submitted that the Petitioner was serving as a Sub-Registrar in the department of Co-operative Society. As such, the Petitioner was posted as Special Officer of three Co-operative Societies in Villupuram by the proceedings of the Deputy Registrar of the Co-operative Society, Villupuram. He has to work from headquarters. Being the Special Officer of three Co-operative Societies in Villupuram. He had to manage the total of 88 staff members of three Co-operative Societies. He used to visit the three Co-operative Societies as part of his supervisory role. Also, three Co-operative Societies had fair price shops, which were involved in running ration shops and distributing food grains to the common man and villagers. Therefore, he has to supervise the procurement of the essential commodities of food grains and other essential commodities and the distribution of the same throughout the district in the three Co-operative Societies without any hindrance and he shall avoid any controversy caused by the staff of the said Co-operative Society. It was highly demanding job. It was beyond the



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normal human capacity to manage three Co-operative Societies.

4. While so, the Petitioner as Special Officer of Farmers Service Co-operative Society, Thirunavalur, Villurpuram District, conducted a surprise inspection on 27.04.2010 and had found out that there was missing of money collected from the members of the Society. Based on which he had placed Thiru.Murugaiyan, cashier of the Society, Thiru.Sivasubramanian, clerk of the Society and Thiru.Veerasundaram, salesman of the Society, as per the provisions of the Tamil Nadu Co-operative Societies Act, 1983 he had immediately passed proceeding regarding the suspension of the persons/staffs involved in the misappropriation of the funds of the society. On the same day, he posted the staff available in the very same Society as clerk and cashier. Accordingly, he had posted Thiru.Murugaiyan, cashier of the Society, Thiru.Sivasubramanian, clerk of the Society and Thiru.Veerasundaram, salesman of the Society on the same day. The keys of the Society were handed over to the said clerk and cashier.

5. While so, on the intervening night, there was the theft of 493 bags weighing 1780 sovereigns of gold jewels from the locker of the Farmers



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Service Co-operative Society, Thirunavalur, Villurpuram District, which was immediately informed to the Petitioner. The Petitioner directed the Secretary of the Farmers Service Co-operative Society, Thirunavalur, Villurpuram District, to lodge a complaint with the Tirunavallur Police. Accordingly, he had lodged a complaint, based on which FIR in Crime No.160 of 2010 was registered by the Police. Since the Tirunavallur Police did not arrest anyone or trace out the missing jewels, the investigation was transferred to the Deputy Superintendent of Police, Economic Offences Wing, Villupuram. The Economic Offences Wing, Villupuram, also could not trace out the missing jewels. Therefore, once again, the investigation was transferred to the CBCID, Villupuram. After the investigation, taken up by CBCID Villupuram, two persons were arrested and 32 sovereigns of jewels were recovered. On further investigation based on the confession of the Accused arrested by the CBCID Villupuram, the involvement of the Special Officer, Thiru.Elumalai, Secretary of the Society, Thiru.Sivasubramaniam, clerk of the Society, Thiru.Murugayen, cashier of the Society and Thiru.Veerasundram, salesman of the Society, was deducted and they were also arrested.



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6. Based on the report of the Investigation Officer, the Tamil Nadu Government had published G.O.Ms.No.590, Home Department, dated 30.08.2013, in which the properties belonging to the Accused as per the charge sheet, Thiru.Elumalai, the Secretary, Thiru.Murugayen, the cashier, Thiru.Sivasubramaniam, the clerk, and Thiru.Veerasundram, the salesman were taken. The investigation was completed and a final report was laid before the Court of the learned Judicial Magistrate, Tirukovilur. Meanwhile, an inquiry was ordered under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, but the name of the Petitioner was not found or mentioned. Without any incriminating materials against the Petitioner, the Deputy Registrar of the Co-operative Society, the 1st Respondent, had proceeded against the Petitioner, stating that the conduct of the Petitioner had caused loss of Rs.1,64,13,445/- to the Farmers Service Co-operative Society, Thirunavalur, Villurpuram District. By which the keys from the suspended cashier and clerk were handed over to the persons arrested in this case. Thiru.Sivasubramaniam and Thiru.Murugayen who were not trained to hold the posts of clerk and cashier under the Tamil Nadu Co-operative Societies Act, 1983, due to the conduct, only the



CBCID, Villupuram, had laid a final report incriminating the Thiru.Elumalai, Secretary of the Society, Thiru.Sivasubramaniam, clerk of the Society, Thiru.Murugayen, cashier of the society. By the time the final report was laid, Thiru.Veerasundram, salesman of the Society had passed away.

7. It is the contention of the learned Counsel for the Revision Petition that the preliminary inquiry conducted under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, did not contain any adverse remarks or report incriminating the Petitioner, who was working as Special Officer of the Co-operative Society. The final report laid by the CBCID Police also did not contain any incriminating material against the Revision Petitioner in the Revision Petition. While so, the 1st Respondent in the Civil Revision Petition, the Deputy Registrar of Co-operative Society, Villupuram, has proceeded against the Petitioner under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, as though the Petitioner, by his conduct, had caused wanton and willful laws to the tune of Rs.1,64,13,445/-.



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8. It is the contention of the learned Counsel for the Revision Petitioner that the G.O.Ms.No.590, Home Department, dated 30.08.2013, issued by the State Government based on the Investigation Officer's Report did not contain the name of the Petitioner. The preliminary inquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, did not contain the name of the Petitioner. While so, the surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, had been issued by the 1st Respondent as against the Petitioner without any materials, which is against the provisions of the Tamil Nadu Co-operative Societies Act, 1983.

9. Aggrieved by the surcharge proceedings issued by the 1st Respondent, the Petitioner had filed CMA(CS)No.8 of 2012 before the learned Principal District and Sessions Judge, Villupuram. The learned Principal District and Sessions Judge, Villupuram, observed as follows:-

The Appellant contended that since he was not an Accused in the criminal case connected with the theft and hence he could not be held liable in this surcharge proceedings. It is untenable one for the following reasons herein stated below:

“18.The criminal case is based on the theft misappropriation, fraudulent retention of any money or



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property, breach of trust, corrupt practice in relation to that society. Whereas, 81 & 87 inquiry are been held is not only criminal liability such as but also misappropriation, fraudulent retention of any money or property, breach of trust, corrupt practice or but also includes for mismanagement, negligence etc., In this case the Appellant as mismanaged by appointed non-qualified persons namely Murugaiyan and Veerasundaram who in turn as the appointment of these persons will fall on mismanagement of the society and also will fall under the negligent attitude of these persons. Hence, without being the Appellant involved in the criminal case for the loss the society has taken surcharge proceedings as against the Appellant is legally valid.

19.The Appellant as without being mentioned in the grounds of Appeal for the first time he has raised that as per G.O.Ms.No.590 dated 13.08.2013 his name does not found out in the G.O and his property has not been attached in the said G.O. This Court as per Section 81 of the Indian Evidence Act 1872, the Court can take judicial notice of the official gazette. Accordingly, judicial notice has been taken as per above G.O. In the above said G.O., it is found that Veerasundaram, Salesman who was given incharge of the Cashier as per Administrative resolution no.1 & 2 passed by this Appellant dated 23.02.2010. Hence, there are no merits in this Appeal.”

10. The learned Principal District and Sessions Judge, Villupuram, as the Special Appellate Tribunal under the Tamil Nadu Co-operative Societies Act, 1983, had misdirected himself and dismissed CMA (CS)No.8 of 2012, which is not in accordance with the provisions of the Tamil Nadu Co-operative Societies Act, 1983. Therefore, the finding of the learned Principal District and Sessions Judge, Villupuram, is perverse.



Aggrieved by the same, the Civil Revision Petition had been filed.

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11. The learned Counsel for the Revision Petitioner invited the attention of this Court to Sections 81 and 87 of the Tamil Nadu Co-operative Societies Act, 1983, which read as follows:

“81.Inquiry. __ (1) *The Registrar may, of his own motion and shall, on the application of a majority of the board or of not less than one third of the members or on the request of the financing bank or of the District Collector, hold an inquiry, or direct some person authorised by him by order in writing in this behalf to hold an inquiry in to the constitution, working and financial condition of a registered society or any alleged misappropriation, fraudulent retention of any money or property, breach of trust, corrupt practice or mismanagement in relation to that society or into any particular aspect of the working of that society.*

(2) The Registrar or the person authorised by him under sub-section (1) shall have the following powers, namely: __

(a) He shall at all reasonable times have free access to the books, accounts, documents, securities, cash and other properties belonging to, or in the custody of, the society and may summon any person in possession of, or responsible for the custody of, any such books, accounts, documents, securities, cash or other properties to produce the same at any place at the headquarters of the society or any branch thereof.

(b) Where any person summoned under clause (a) fails or refuses to produce any record or property of the registered society as specified in the summons, any Metropolitan Magistrate or any Judicial Magistrate of the first class in whose jurisdiction the office of such society or the records and properties of such society is or are situated, shall on application by the Registrar or the



person authorised by him under sub-section (1), direct the delivery to the Registrar or such person of the possession of the records and properties of such society :

Provided that no such application shall be made by the person authorised under sub - section (1) without the previous sanction of the Registrar.

(c) He may seize the books, accounts or documents of the society, if he considers that such seizure is necessary to ensure the safety of such books, accounts or documents or to facilitate his inquiry, and shall give the person from whose custody the books, accounts or documents have been seized a receipt for the same:

Provided that the books, accounts or documents seized shall be retained by him only for so long as may be necessary for their examination and for the purpose of inquiry:

Provided further that the books, accounts or documents shall not be retained for more than three months at a time except with the permission of the next higher authority.

(d) He may summon any person who, he has reason to believe, has knowledge of any of the affairs of the society and may examine such person on oath and may summon any person to produce any books, accounts or documents belonging to him or in his custody if the Registrar , or the person authorised as afore said has reason to believe that such books, accounts or documents contain any entry relating to transactions of the society.

(e) (i) He may, notwithstanding any rule or by – law specifying the period of notice for a general meeting of the society or for a meeting of the board, require any officer or officers of the society to call a general meeting or a meeting of the board at such time and place at the headquarters of the society or any branch thereof to consider such matters as may be specified by him and the provisions of sub - clauses (i) and (ii) of clause (b) of sub-



section (4) of section 32 shall apply to any meeting called under this sub-clause as if it were a meeting called in pursuance of a requisition under clause (a) of sub-section (3) of that section.

(ii) If the officer or officers of the society refuses or refuse or fails to call such meeting or if in the opinion of the Registrar there is no board or officer or officers competent under this Act, the rules or the by-laws to call such meeting, or if there be an order of the Registrar or of the Civil Court restraining the board to function, the Registrar or the person authorised by him under sub-section (1) shall have power to call the meeting himself and the provisions of clause (b) of sub-section (4) of section 32 and sub-section (5) of that section shall apply to such meeting as if it were a meeting called under clause (a) of the said sub-section (4).

(3) When an inquiry is held under this section, the Registrar shall within such time as may be prescribed communicate the result of the inquiry —

(i) in case the Government have subscribed directly to the share capital of the registered society or in case any moneys are due from the registered society either to the Principal State Partnership Fund or to the Subsidiary State Partnership Fund referred to in chapter VI, to the Government or to any officer appointed by the Government in this behalf;

(ii) to the financing bank, if any, to which the society is affiliated; and

(iii) to the society concerned.

(4) The inquiry shall be completed within a period of three months from the date of ordering the inquiry or such further period or periods not exceeding three months at a time as the next higher authority may permit provided that such extended periods shall not exceed six months in the aggregate.

(5) It shall be competent for the Registrar to withdraw any inquiry from the person authorised by him under sub-section (1) and to hold the inquiry himself or



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entrust it to any other person as he deems fit.

(6) The Registrar may, by order in writing, direct the registered society or any officer of the society or its financing bank to take such action as may be specified in the order to remedy, within such time as may be specified therein, the defects, if any, disclosed as a result of the inquiry.”

“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 or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or willful 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 and in the case of a deceased person, to his representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust or willful negligence or payments which are not in accordance with this Act, the rules or the by-laws as the Registrar or the person authorised as aforesaid thinks just:*

Provided that no action shall be commenced under



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this sub section after the expiry of seven years from the date of any act or omission referred to in this sub section :

Provided further that the action commenced under this sub section shall be completed within a period of six months from the date of such commencement or such further period or periods as the next higher authority may permit but such extended period or periods shall not exceed six months in the aggregate.

(2) Without prejudice to any other mode of recovery which is being taken or may be taken under this Act or any other law for the time being in force, any sum ordered under this section to be repaid to a registered society or recovered as a contribution to its assets may be recovered as if it were an arrear of land revenue and for the purpose of such recovery the Registrar shall have the powers of a Collector under the Tamil Nadu Revenue Recovery Act, 1864 (Tamil Nadu Act II of 1864).

(3) This section shall apply notwithstanding that such person or officer or servant may have incurred criminal liability by this act.

(4) The Registrar or the person authorised by him shall, when acting under this section, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908) in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any documents;

(c) reception of evidence on affidavits;

(d) requisitioning any public record from any court or office,

(e) issuing commission for examining of witnesses.”

12. In support of his contention, the learned Counsel for the

Revision Petitioner relied on the following rulings:-



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- a) In the case of ***S.Marimuthu and Another Vs. Deputy Registrar of Co-operative Societies (Housing), Madurai Circle and Another*** reported in ***(2006) 4 MLJ 86***, it held as follows:

“Tamil Nadu Co-operative Societies Act, 1983 (T.N. Act 30 of 1983), Section 87 – Surcharge Proceedings – Initiation of – Condition precedent is willful and deliberate misconduct or negligence – surcharge Proceedings initiated against Special Officers of a Co-operative Society – For illegally appointing a lady typist and causing loss to the Society – Proceedings challenged in Writ Petitions – There is nothing to show that the appointment was made by the Petitioners on their own accord – They were only implementing the orders of the Registrar of Co-operative Societies – Hence responsibilities cannot be fixed solely on the Petitioners for the appointment – At any event, there is no evidence to show any willful negligence on the part of the Petitioners – Surcharge proceedings quashed – Writ Petitions allowed.”

- b) In the case of ***A.Janakiraman and Another Vs. Deputy Registrar of Co-operative Societies, Kumbakonam and Another*** reported in ***(2009) 6 MLJ 1051***, it held as follows:

“Tamil Nadu Co-operative Societies Act, 1983 (T.N. Act 30 of 1983), Section 87 – Surcharge Proceedings initiated against Petitioners – On ground of stock deficiency – Order of recovery under Section 87 challenged – Respondent register failed to establish that a copy of enquiry report under Section 81 was furnished before initiating surcharge proceedings – Violation of principles of natural justice – Wilful dereliction of duty by Petitioners have not been established – Proceedings initiated against Petitioners cannot be sustained – Impugned order set aside.”



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c) In the case of ***S.Kumarasamy Vs. The Deputy Registrar of Co-operative Societies, Kovilpatti***, reported in ***2013 (1) CTC 367***, it held as follows:

“Tamil Nadu Co-operative Societies Act, 1983 (T.N. Act 30 of 1983), Section 87 – Surcharge Proceedings – Principles of Natural Justice – Enquiry Report under Section 81 not submitted to Petitioner along with Notice under Section 87 – Report submitted to Petitioner long after issuance of Notice under Section 87 – In such circumstances, held, Petitioner not afforded with ample opportunity at time of receipt of Notice and entire proceedings vitiated on account of violation of Principles of Natural Justice.”

13. Learned Additional Government Pleader appearing for the 1st Respondent invited the attention of this Court to the judgment passed by the learned Principal District and Sessions Judge, Villupuram, in CMA(CS)No.8 of 2012 by judgment dated 28.07.2019.

14. Further, the learned Additional Government Pleader for the 1st Respondent relied on the finding of the 1st Respondent in the proceeding in Na.Ka.No.194 of 2011 dated 15.06.2021, wherein, it has been specifically mentioned that the Petitioner herein as Special Officer failed to supervise the staff and officers of the Farmers Service Co-operative Society, Thirunavalur, Villurpuram District. Also, as per the proceeding passed by



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the Petitioner herein as Special Officer of the Farmers Service Co-operative Society, Thirunavalur, Villurpuram District, he had appointed Thiru.Sivasubramaniam and Thiru.Murugayen, as clerk and cashier, who were not qualified to hold that post and who were not experienced, to maintain the registers and lockers of the Farmers Service Co-operative Society, Thirunavalur, Villurpuram District, which had resulted in the theft of 1780 sovereigns for the value of Rs.1,64,13,445/-. Therefore, the conduct of the Petitioner alone resulted in the loss.

15. In support of his contention, the learned Additional Government Pleader for the 1st Respondent filed counter, which are as follows:

“10.It is submitted that while the Petitioner was in charge of the 2nd Respondent Society had left the station on 22.05.2010 without getting prior permission of the higher officials and his newly engaged PDS staff kept the society key and locker key in one place and taking advantage of that on 22.05.2010 mid night some antisocial elements had stolen the jewels kept in the locker weighing 1780 sovereigns in 493 bags valued at Rs.1,64,13,445/- as per the then valuation of jewels and cash balance of Rs.3.5 lakhs. This came to the knowledge when the Secretary in charge of the Society had lodged a police complaint on 23.05.2010. But the Petitioner who was responsible for the custody of the jewels did not come to the spot when 493 farmers gathered before the Society after hearing that their jewels were stolen in such a pre managed show of engaging PDS staff by the Petitioner.



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15.It is incorrect to state that he has fastened the liability to the tune of Rs.1,64,13,706/- under item 10 of the surcharge without any allegations. The allegations stated in ground 6 to 8(1) and (11) are totally incorrect when especially he was entrusted with the post of Special Officer, it is his sole responsibility to safe guard the interest of the properties of the society by proper Management and without any willful negligence, but the records and evidence demonstrate that he entrusted locker key to outside staff of PDS salesman thereby he miserably failed to discharge his duties diligently and thereby caused loss of Rs.1.64 crores being the value of jewels and 3.5 lakhs cash. Therefore, there is no substance in stating that he acted in good faith keeping the interest of the society members and the general public.

22.There is no substance in the allegation stated in ground 25 and 26. It is submitted that apart from documentary evidence, the Petitioner himself admitted that he engaged outside staff of PDS salesman to look after the very sensitive and important work of keeping the locker by handing over the key to him which establish that he committed the act of mismanagement and willful negligence. The surcharge proceedings and surcharge order is legal and just. It is not motivated as alleged.”

16. Learned Counsel for the 2nd Respondent adopted the submission of the learned Additional Government Pleader for the 1st Respondent.

17. By way of reply to the submission of the learned Additional Government Pleader for the 1st Respondent, the Learned Counsel for the Revision Petitioner submitted that the submission of the learned Additional Government Pleader for the 1st Respondent cannot at all be sustained as the



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Petitioner as the responsible Sub-Registrar of the Co-operative Society as Special Officer of the Farmers Service Co-operative Society, Thirunavalur, Villurpuram District, had appointed Thiru.Sivasubramaniam and Thiru.Murugayen in the place of the persons who had involved in misappropriation of the funds of the Society the earlier, clerk and the cashier namely, Thiru.Mothibai @ Farooklal and Thiru.Sivakumar and on the same day the staff of the very same Society only were appointed as clerk and cashier. Both of them were qualified to hold the post as they were holding diploma in Co-operative Society. Regarding the contention that they were not experienced in maintaining the register and locker, it does not hold good as they were working as clerical cadre as the staff in the very same Society. For the day-to-day affairs of the Society, the Petitioner as Sub Registrar of the Co-operative Society, is to remain in the headquarters at Villupuram, in the office of the Deputy Registrar of the Co-operative Society. He is not expected to be available in all three Societies daily on a day-to-day basis and for day-to-day affairs of the Farmers Service Co-operative Society, Thirunavalur, Villurpuram District. The Secretary of the Society himself is responsible. He is given direction by the Petitioner as Special Officer of the Co-operative Society. As Special



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Officer of the Co-operative Society, he has to conduct trips and surprise inspections, which is expected from him and he has acted accordingly.

18. While so, the investigation proceeded and found out the culpability of the Secretary of the Farmers Service Co-operative Society, Thirunavalur, Villurpuram District, for which the Petitioner cannot be held liable. Under those circumstances, the conduct of the Petitioner cannot be found culpable or wanton to cause loss. The involvement of the Petitioner was not found during the police investigation. While so, the submission of the learned Additional Government Pleader for the 1st Respondent cannot at all be sustained and has to be rejected. Therefore, the learned Counsel for the Revision Petitioner submitted that this Civil Revision Petition is to be allowed under Article 227 of the Constitution of India in the light of the rulings and the order passed by the 1st Respondent imposing surcharge penalty on the Petitioner without any substantive materials either through G.O.Ms.No.590, Home Department, dated 30.08.2013, or the Police report laid before the learned Judicial Magistrate, Tirukovilur, or the preliminary inquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983. Therefore, the finding of the 1st Respondent holding the Petitioner



liable for the loss caused to the 2nd Respondent's Society, which was upheld by the learned Principal District and Sessions Judge, Villupuram, has to be set aside.

19. Point for consideration:

Whether the proceeding of the 1st Respondent in Na.Ka.No.194/2011 dated 15.06.2012, imposing penalty under Section 87 of the Tamil Nadu Cooperative Societies Act, 1983, and it was confirmed by the learned Appellate Authority Tribunal under the Cooperative Societies Act/Principal District and Sessions Judge, Villupuram, dismissing CMA(CS)No.8 of 2012, dated 28.10.2020 are to be set aside?

20. On consideration of the rival submission and on perusal of the surcharge order passed by the 1st Respondent dated 15.06.2012 in Na.Ka.No.194 of 2011 Sa.Pa.dated 15.06.2012 and the judgment of the learned Principal District and Sessions Judge, Villupuram as Appellate Authority under the Tamil Nadu Co-operative Societies Act, 1983, in dismissing CMA(CS)No.8 of 2012 confirming the order of the Deputy Registrar of the Co-operative Society, Villupuram, it is found that as rightly pointed out by the learned Counsel for the Revision Petitioner that there are no incriminating materials in the preliminary inquiry held under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, and in the



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criminal case registered on the basis of the complaint given by the staff of the Farmers Service Co-operative Society, Thirunavalur, Villupuram District, with the Tirunavallur Police Station, which was transferred to the Economic Offences Wing, Villupuram, and subsequently to the CBCID Police. Based on which Thiru.Mothibai @ Farooklal and Thiru.Sivakumar were arrested, Thiru.Elumalai, Secretary of the Society, Thiru.Murugayen, cashier of the Society, Thiru.Sivasubramaniam, clerk of the Society and Thiru.Veerasundram, salesman of the society. There was no incriminating material filed either in the charge sheet filed by the CBCID or the preliminary inquiry report under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983.

21. As per the ruling cited by the learned Counsel for the Revision Petitioner in the case of ***S.Marimuthu and Another Vs. Deputy Registrar of Co-operative Societies (Housing), Madurai Circle and Another*** reported in ***(2006) 4 MLJ 86***, it was the case where a lady typist was appointed in the Society by the Petitioner, who was working as Special Officer of the 2nd Respondent Society in the reported decision. Subsequently, there was audit objection, based on which the lady typist



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was terminated from service. The lady typist was appointed after obtaining appropriate orders from the Registrar of the Co-operative Society. The lady typist was appointed on the basis of the direction issued by the Registrar of the Co-operative Society. Based on the audit objection after terminating the service of the lady typist, it was held that the salary paid to the lady typist till her termination had caused loss to the 2nd Respondent Society. The Petitioner in the reported case was held liable for causing loss to the society and therefore, a surcharge proceeding was initiated. The Hon'ble High Court in the order in W.P had held that in the surcharge proceeding initiated against the Special Officer of the Co-operative Society for legally appointing lady typist and causing loss to the society, there is no material to show that the appointment was made by the Petitioner on his own accord. He had acted only under the orders of the Registrar of the Co-operative Society, whose responsibilities cannot be fixed. It is only for the Petitioner's appointment. Also, it was held that there was no evidence to show willful negligence on the part of the Petitioner in the Writ Petition in the reported decision to attract surcharge proceedings. Therefore, the Writ Petition was allowed and surcharge proceedings quashed.



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21(a) The above ratio of the decision in the Writ Petition more or less is similar to the case of the Petitioner herein. In this case, who was the Special Officer of the Farmers Service Co-operative Society, Thirunavalur, Villurpuram District. Just because the Secretary of the Farmers Service Co-operative Society, Thirunavalur, Villurpuram District, the clerk, cashier and salesman were involved in the alleged theft of gold jewels pledged by the members of the Society who have availed loans of 1780 sovereigns, they were stolen by Thiru.Mothibai @ Farooklal and Thiru.Sivakumar. The Petitioner is alleged to have appointed the clerk and the cashier of the Society, which cannot be considered willful negligence. It is true that the involvement of Thiru.Elumalai, Secretary of the Society, Thiru.Sivasubramaniam, clerk of the Society, Thiru.Murugayen, cashier of the Society, and Thiru.Veerasundram, salesman of the Society, are found to have been involved in the charge sheet laid by the CBCID, for which the Petitioner, who was the Special Officer, who was the Sub Registrar of the Co-operative Society acting as Special Officer, cannot be held responsible merely on presumptions, surmises and conjectures by the Deputy Secretary of the Co-operative Society, Villupuram. As per the Tamil Nadu Co-operative Societies Act, 1983, when he had acted as Special Officer by



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conducting visit and surprise inspection, he had found himself misappropriating funds of the Society based on earlier clerk and cashier suspensions on the same day. He had appointed Thiru.Sivasubramaniam and Thiru.Murugayen as clerk and cashier, which cannot be faulted against the Petitioner. His proceedings had been accepted by the higher officials, and not only that, but the day-to-day activities of the Farmers Service Co-operative Society, Thirunavalur, Villurpuram District, had to be run by the Secretary of that Society. Also, the said persons who were suspended and in their place two other persons appointed by the Petitioner as Special Officers of Farmers Service Co-operative Society, Thirunavalur, Villurpuram District, where staff of the very same society and day-to-day activities had to be conducted, administered and supervised by the Secretary of the Society, who himself had alleged to have been involved in the alleged theft, for which the lack of supervision cannot be blamed on the Petitioner.

21(b) As pointed out by the learned Counsel for the Petitioner, on the date of the occurrence, the Petitioner was holding three additional charges for the post of Special Officer of two other Societies. Totally, he



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was supervising three Societies. The day-to-day activities of the Societies had to be taken care of by the Secretary of the respective Society, under whom staff are available. The very same Society is alleged to have been involved in the theft of gold jewels pledged by the members of the Society who availed themselves of a loan of 1780 sovereigns. Even in the G.O. published by the State Government, the name of the Petitioner is not found. Therefore, the ratio of the reported ruling, the Deputy Registrar more over less, is similar to the case of the Petitioner, for which the Petitioner cannot be fastened with a surcharge penalty under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983.

22. Further, as per the report ruling cited by the learned Counsel for the Revision Petitioner in the case of *A.Janakiraman and Another Vs. Deputy Registrar of Co-operative Societies, Kumbakonam and Another* reported in *(2009) 6 MLJ 1051*, it was the case of the Revision Petitioner that inquiry report under Section 81 was not furnished to the Revision Petitioner in the reported case. Notice under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, mentioned the enclosing of a copy of the report under Section 81 of the Tamil Nadu Co-operative Societies Act,



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1983. Originally, there was no such report. Therefore, it was held that the entire proceeding was vitiated on account of violation of principles of natural justice. It is stated that there was a Secretary in the Society and his duty is to supervise the work of the subordinate staffs and if there were any negligence, it could only be on the part of those subordinates and supervising officers. It is to be held that no significant willful negligence has been inferred on the part of the Petitioner and he cannot be held liable for the loss incurred by the Society. The presumption drawn by the 1st Respondent/Deputy Registrar of Co-operative Society on the role of the Petitioner herein, who was the Sub Registrar posted as Special Officer, cannot be invoked for the purpose of Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, of surcharge proceeding or surcharge penalty as per the above ruling, as there is no material available to the 1st Respondent herein to arrive at such a conclusion in the absence of any material. A mere presumption based on which the 1st Respondent had imposed penalty under Section 87 of the proceeding will not stand scrutiny before any Court of law.



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23. Also, as per the reported ruling cited by the learned Counsel for the Revision Petitioner in the case of ***S.Kumarasamy Vs. The Deputy Registrar of Co-operative Societies, Kovilpatti***, reported in ***2013 (1) CTC 367***, the report submitted regarding the preliminary inquiry was long after issuance of notice under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983. Therefore, it was held that the Petitioner was not afforded ample opportunity at the time of receipt of notice under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983. Therefore, the entire proceeding was vitiated on the principles of violation of natural justice. In the facts of the reported decision, negligence in the affairs of the society was also attributed to the Secretary of the Society and subordinates who were in charge of the same when no willful negligence was attributed to the proceeding and the proceeding initiated against the President was held invalid. Here also, the facts are similar. The Petitioner is held liable for the loss of 1780 sovereigns of gold jewellery stolen by two people who were arrested by the CBCID. Subsequently, CBCID arrested Thiru.Elumalai, Secretary of the Society, Thiru.Sivasubramaniam, clerk of the Society, Thiru.Murugayen, cashier of the Society, and Thiru.Veerasundaram, salesman of the Society. The Petitioner is stated to



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have placed the earlier clerk and cashier for misappropriation funds of the Society on the same day when they were placed under suspension, the very same staff of the Society, Thiru.Sivasubramaniam and Thiru.Murugayen were appointed as clerk and cashier. That cannot be considered against the Petitioner to invoke surcharge proceeding against the Petitioner as the day-to-day affairs of the Society are supervised by the Secretary of the society, and the Secretary of the Society himself is alleged to have been involved in the offence as per the charge sheet laid by the CBCID, for which the Petitioner cannot be fastened with surcharge penalty on the basis of the surmises and conjectures.

23(a) In the inquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, there was incriminating material against the Sub Registrar of the Co-operative Society, the Petitioner herein, who was the Special Officer of the three Co-operative Societies in Villupuram, one of which was the Farmers Service Co-operative Society, Thirunavalur, Villurpuram District. In all the above stated rulings, it is stated and laid down that wanton negligence has to be proved in the materials made available in the course of the inquiry. Here, no such material made



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available, the 1st Respondent/Deputy Registrar of the Farmers Service Co-operative Society, Thirunavalur, Villurpuram District had acted without any materials before him to impose penalty under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983.

24. In the light of the above three rulings, the counter filed by the 1st Respondent placing reliance on the judgment of the learned Principal District and Sessions Judge, Villupuram, who is the Appellate Authority under the Tamil Nadu Co-operative Societies Act, 1983, is found to be unacceptable. The learned Principal District and Sessions Judge, Villupuram, had misdirected himself ignoring the substance of the Tamil Nadu Co-operative Societies Act, 1983 and confirmed the finding of the 1st Respondent which is found to be perverse in the facts and circumstances of this case as is available from the records.

25. Moreover, in all the reported rulings cited by the learned Counsel for the Petitioner, even though facts are different, it is held that there shall be sufficient proof against the delinquent who could have indulged in willful and wanton negligence resulting in loss to society. Only



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then surcharge proceeding can be initiated. Here is the case where there are no materials available either in the G.O. or in the preliminary inquiry report under Section 81 of the Tamil Nadu Co-operative Societies Act or in the charge sheet laid against the Secretary of Farmers Service Co-operative Society, Thirunavalur, Villurpuram District Society, clerk, cashier and salesman along with few others who were not staff of the Society, Thiru.Mothibai @ Farooklal and Thiru.Sivakumar.

26. In the light of the above discussion, the point for consideration is answered in favour of the Revision Petitioner and against Respondents 1 and 2.

27. The judgment of dismissal of CMA(CS)No.8 of 2012 dated 28.10.2020 passed by the learned Principal District and Sessions Judge, Villupuram, as Appellate Authority confirming the order of the 1st Respondent Na.Ka.No.194 of 2011 Sa.Pa dated 15.06.2012 are also found to be perverse ignoring the provisions of the Tamil Nadu Co-operative Societies Act, 1983, and the reported rulings of the High Court, Madras, wherein it had been continuously reiterated that staff or officer of the



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Society cannot be proceeded under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 in the absence of proof or materials regarding willful and wanton negligence resulting in loss to the Society.

28. In the result, this **Civil Revision Petition stands allowed**. The judgment of CMA(CS)No.8 of 2012 dated 28.10.2020 passed by the learned Principal District and Sessions Judge, Villupuram, as Appellate Authority confirming the order of the 1st Respondent in Na.Ka.No.194 of 2011 Sa.Pa dated 15.06.2012 are hereby set aside. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

22.12.2023

cda

Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No



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To

- 1.The Principal District Judge, Villupuram.
- 2.The Deputy Registrar of Co-operative Society, Thirunavalur.
- 3.The Section Officer, VR Records,
High Court, Chennai.



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SATHI KUMAR SUKUMARA KURUP, J.,

cda

**Order in
C.R.P.No.1237 of 2021**

22.12.2023