



C.R.P.(NPD)(MD).No.2049 of 2012

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 02.02.2023

DELIVERED ON: 09 .02.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(NPD)(MD).No.368 of 2012

and MP(MD).No.1 of 2012

M.Rajapandi

...Petitioner/Appellant

Vs

1.The Special Officer
TN SPL 122 K.Kumara Reddiarpuram Primary Agricultural
Co-operative Bank Ltd.,
Vilathikulam Taluk
Thoothukudi District

2.The Deputy Registrar of Co-operative Societies
having office at Kovilpatti
Thoothukudi District

3.P.Krishnamoorthy

...Respondents /Respondents

PRAYER: Civil Revision Case is filed under Article 227 of the Constitution of India, to allow this Civil Revision Petition by setting aside the order passed by the Principal District Judge, Thoothukudi in C.M.A. (CS).No.49 of 2005 dated 18.06.2010.



C.R.P.(NPD)(MD).No.2049 of 2012

For Petitioner : Mr.K.Gurunathan
For Mr.G.Thalaimutharasu

For R1 & R2 : Mr.C.Baskaran
Government Advocate

For R3 : No Appearance

ORDER

The present revision petition has been filed challenging an order passed by the Co-operative Tribunal confirming the order passed under Section 87 of the Tamil Nadu Co-operative Societies Act.

2.The revision petitioner herein was working as a Secretary in the first respondent Co-operative Bank. On certain allegations relating to fixed deposit, jewel loan and other loans relating to stock/fertilizers, an enquiry was initiated under Section 81 of the Tamil Nadu Co-operative Societies Act and a report was filed on 10.03.2003. Based upon the said enquiry, a notice under Section 87 of the Tamil Nadu Co-operative Societies Act was issued to the petitioner on 26.07.2004. The petitioner had appeared before the authorities concerned and had contended that he was only a whistle blower and he had not committed any one of the irregularities as alleged. He had further contended that the enquiry report



C.R.P.(NPD)(MD).No.2049 of 2012

under Section 81 of the Tamil Nadu Co-operative Societies Act was not furnished to him. Even assuming that the allegations are true, the entire allegations relate to lack of supervision and the same would not attract the surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act. However, the original authority did not accept the said contention and passed the surcharge order as against the revision petitioner on 21.04.2005. Challenging the said order, the petitioner had filed CMA (CS).No.49 of 2009 before the Principal District Judge, Thoothukudi. The learned District Judge was pleased to confirm the order of the Original Authority. Challenging the same, the present revision petition has been filed.

3.The learned counsel appearing for the petitioner had contended as follows:

(i).The petitioner was not summoned by the Original Authority for any enquiry during the proceedings under Section 81 of the Tamil Nadu Co-operative Societies Act. The enquiry report under Section 81 was not furnished to him.



C.R.P.(NPD)(MD).No.2049 of 2012

(ii).All the allegations pertain to the irregularities committed by the Cashier Krishnamoorthy. The petitioner as a Secretary of the Co-operative Bank had issued a memo to the said Krishnamoorthy for the alleged irregularities on various dates even before initiation of the enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act.

(iii).According to the learned counsel for the petitioner, the said Krishnamoorthy was also issued with a memo calling for explanation why action should not be initiated against him. The said Krishnamoorthy had accepted the allegation and he had given an undertaking that he would credit the misappropriated amount to the account of the Bank. In such circumstances, the question of misappropriation or lack of supervision will not arise as against the petitioner.

(iv).He had further contended that Section 87 proceedings are initiated only to fix the exact financial liability on the officer of the Society. However, a perusal of the order of the Original Authority will clearly indicate that no specific allegations have been proved as against the revision petitioner and all the allegations relate to lack of supervision on the part of the revision petitioner.



C.R.P.(NPD)(MD).No.2049 of 2012

(v).The Appellate Authority had also arrived at a finding that there was lack of supervision on the part of the revision petitioner.

(vi).Unless there is any financial irregularity resulting in loss to the management of the Co-operative Bank, the proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act cannot be initiated. Even assuming that there was lack of supervision, the same would not attract the proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act.

4.The learned counsel for the petitioner relied upon a judgement of our High Court reported in **2013-4-L.W.249 (K.Govindasamy Vs. Ms.A.Rajamani & others)** and the order **in CRP(MD).No.1214 of 2013 dated 18.11.2019 (S.Saranyadevi Vs. The Special Officer, Co-operative Housing Society, Karur and another)** to contend that even the act of negligence would not attract the surcharge proceedings, unless it is said to be willful. Hence, he prayed for allowing the revision petition.

5.Per contra, the learned counsel appearing for the respondents had contended that the petitioner, as Secretary of the Bank, had colluded with Cashier and both were responsible for misappropriation of the



C.R.P.(NPD)(MD).No.2049 of 2012

amount. Therefore, the petitioner cannot contend that he had not committed any misappropriation and there was only lack of supervision.

The learned counsel had further contended that it is not the case of mere lack of supervision, in view of the fact that the petitioner was also a beneficiary of the misappropriation made by the Cashier. The Original Authority as well as the Appellate Authority have carefully perused the files and thereafter, arrived at a finding that the petitioner is also liable under the surcharge proceedings. Hence, he prayed for dismissal of the revision petition.

6.I have considered the submissions made on either side and perused the materials available on record.

7.The petitioner has been issued with a notice under section 87 of the Tamil Nadu Co-operative Societies Act on 26.07.2004 to appear for an enquiry relating to the financial irregularities to a tune of about Rs.9,64,207.80. The show cause notice points out 6 financial irregularities. A perusal of all 6 irregularities will clearly indicate that the revision petitioner who was the Secretary and one Krishnamoorthy who was the Clerk have jointly committed certain irregularities and has caused a financial loss to the respondent Co-operative Bank.



C.R.P.(NPD)(MD).No.2049 of 2012

8.It is the case of the petitioner that he alone found out the alleged irregularities and initiated proceedings as against the Clerk Krishnamoorthy by issuing a memo on 07.09.2001. Pursuant to the said memo, the said Krishnamoorthy had submitted a reply to the petitioner that he would return all the jewel bags immediately and he had also returned the same on 10.09.2001. Thereafter, the petitioner had issued another show cause notice to the Clerk, Krishnamoorthy on 12.09.2001. In the reply to the said show cause notice, the Clerk has accepted the delinquency and he has redeposited the amount in the Bank. Thereafter, on 29.12.2001, another show cause notice was issued to the Clerk calling upon him why action should not be initiated against him for committing misappropriation of a sum of Rs.1,50,000/- on 28.12.2001. The Clerk has redeposited the said amount and submitted a reply on 02.01.2002 confirming the redeposit of the said amount. All these communications have taken place between 07.09.2001 to 12.01.2002.

9.A perusal of the typed set of papers indicate that the proceedings under Section 81 of the Act have been initiated on 16.07.2002 for the allegation relating to the period prior to 30.06.2002. Therefore, it is clear that the petitioner was continuously issuing memo and calling for



C.R.P.(NPD)(MD).No.2049 of 2012

explanation from the Clerk Krishnamoorthy for the alleged irregularities.

The said Clerk Krishnamoorthy has also remitted back the amount and returned the jewel bags, pursuant to the action initiated by the revision petitioner. Finally, the Clerk has also remitted back a sum of Rs.1,50,000/- on 12.01.2002. Therefore, it is clear that the said Clerk Krishnamoorthy was indulging in irregularities and the petitioner was continuously supervising the same and attempting to set right the things by issuing the memo. For the same allegation, Section 87 proceedings have been initiated as against the revision petitioner and the said Clerk Krishnamoorthy on the ground that they have colluded together and have caused financial loss to the Co-operative Bank.

10.A perusal of the order passed by the Original Authority clearly indicates that he has not fixed any specific liability upon the revision petitioner, but has found that the petitioner and the said Krishnamoorthy had colluded together and have caused financial loss. However, the memo issued by the revision petitioner as against the Krishnamoorthy and his reply between 07.09.2001 and 12.01.2002 will clearly indicate that there was no collusion between them and in fact, the



C.R.P.(NPD)(MD).No.2049 of 2012

revision petitioner is a whistle blower. The Appellate Authority without considering the issue on merits, has arrived at a finding that there was a lack of supervision on the part of the revision petitioner.

11.In view of the above said deliberations, it is clear that there was neither collusion nor lack of supervision on the part of the revision petitioner in conducting the affairs of the Co-operative Bank. In fact, the petitioner has not been summoned during the enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act and the enquiry report has also not been furnished to him. Without furnishing the enquiry report, the petitioner cannot be called upon to submit his explanation during the surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act.

12.In a judgement reported in **2013-4-L.W.249(K.Govindasamy Vs. Ms.A.Rajamani & others)** in Paragraph No.18, this Court has held as follows:

“18.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 willful or



C.R.P.(NPD)(MD).No.2049 of 2012

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 willful negligence on their part”

13.A perusal of the said judgement will clearly indicate that even assuming that there was a lack of supervision or the petitioner has acted without care and in a negligent manner, he cannot be held liable under Section 87 of the Act, unless the said negligence or lack of supervision is coupled with willful or deliberate intention to commit such negligence. In the present case, the petitioner has been vigilant enough, has issued memo to the delinquent namely the Krishnamoorthy and has also made him to return the jewel bags and remit the misappropriated amount of Rs. 1,50,000/- even before initiation of the proceedings under Section 81 of the Tamil Nadu Co-operative Societies Act. Therefore, it is clear that the Original Authority as well as the Appellate Authority have not properly appreciated the facts and they have simply arrived at a finding that the



C.R.P.(NPD)(MD).No.2049 of 2012

petitioner had colluded with one Krishnamoorthy and there was a lack of supervision on the part of the revision petitioner. The findings are not based upon any evidence, but they are contrary to the evidence on record.

14.In view of the above said discussion and the judgment of this Court cited supra, the order of the Original Authority as well as the Appellate Authority are not sustainable in the eye of law and they are set aside. The Civil Revision Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

09.02.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
msa

To

- 1.The Principal District Judge
Thoothukudi
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

11/12



WEB COPY



C.R.P.(NPD)(MD).No.2049 of 2012

R.VIJAYAKUMAR, J

msa

Pre-delivery order made in
C.R.P.(NPD)(MD).No.368 of 2012
and MP(MD).No.1 of 2012

09.02.2023